SACRED TO THE MEMORY

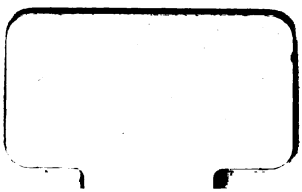
OF

HON. JOHN R. EAKIN

LATE ASSOCIATE JUSTICE

OF THE

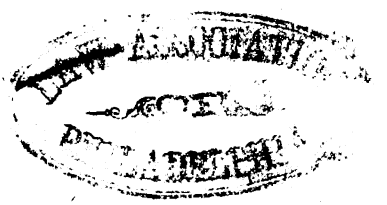
SUPREME COURT OF ARKANSAS.



ARKANSAS

State Bar Association

1886



1886.

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PROCEEDINGS

OF THE

FIFTH ANNUAL MEETING

OF THE

ARKANSAS STATE BAR ASSOCIATION

HELD AT

LITTLE ROCK, ARK.,

Wednesday, Jan. 6, 1886.

LITTLE ROCK, ARK.
GAZETTE PRINTING COMPANY.
1886.

BAR MEETING.

The fifth annual meeting of the Arkansas State Bar Association was held in the United States court-room, in the City of Little Rock, beginning at 10 o'clock, A. M., Wednesday, the 6th day of January, 1886. The following proceedings were had, to-wit:

In the absence of the President, W. P. Grace, the Association was called to order by W. W. Smith, Chairman of the Executive Committee, who called J. H. Crawford, Eighth Vice-President, to the chair, in the absence of all senior vice-presidents.

By leave, the Secretary was given until this afternoon session to make report.

W. H. Cate, Second Vice-President, appearing, was conducted to the chair and assumed the duties of President of the Association.

The Treasurer made report, showing the amounts received and disbursed, leaving a balance in the treasury of $478.97.

The report, upon motion, was referred to the Executive Committee.

The election of officers for the ensuing year, being next in order, was upon motion postponed until 3 o'clock, P. M.

The Committee on Memorials was given until tomorrow morning session to make report.

Charles Coffin, being introduced, read the following pape on "Property Exemptions:"

PAPER OF CHARLES COFFIN.

The State of Arkansas, like many others of the United States, has, from time to time in recent years, provided in its Constitution and by Statutes, that a limited amount of property, both personal and real, in the hands of residents, might be exempted from sale under process of the courts for all debts by contract, except for the purchase money of specific property on which a lien is by law reserved by the vendor.

The prime motive of the law-makers, as interpreted by the courts, seems to have been for the protection of the poor; but if the practices and laws which have grown out of this provision are constitutional, it is very questionable whether the intended blessing has not proven to be an evil. At any rate, some of the statutes seem to be anomalous, when compared with the constitutional provision and the motive that inspired it.

Now, if the constitutional provision is right in principle, it seems to me that it should give absolute protection, and that its protection should not be nullified, either by statutory modification or by executory contracts.

But is the law right in principle?

The universal law of contracts permits every man of sound mind and lawful age to bind himself, for a consideration, to do or not to do a particular thing. And all contracts to pay money at a future time, are based by the creditor, either upon his faith in the honor and ability of the debtor to pay according to his promise, or upon his reliance upon the law to subject his property to the process of the courts for the satisfaction of the debt if the payment is not voluntarily made. In this State the persons most affected by the laws under discussion are practically limited to two classes, and I shall consider them in their effect especially upon these two classes, viz.: Merchants and farmers—and I take the position that in their transactions under these laws, both are ultimately injured, and as they comprise so large a proportion of the entire body politic, the whole State thereby suffers.

For convenient illustration, take an ordinary mercantile transaction, when goods are sold on a credit. The merchant sells and delivers his merchandise, under ordinary conditions, and reasonable information as to the ability of the debtor to pay for them on the maturity of the time agreed upon. The other party receives and promises to pay at a certain time in the future, but may, deliberately, during the entire period of credit, so dispose of his property as to reduce it to an amount in value within the limit of exemption, and then take advantage of the law and reserve that amount from sale for the payment of his just indebtedness.

But, says one, the creditor knew of the law and the privileges under it, when he extended the credit, and sold subject to the law. True; but the law as it is, being indefinite as to what property is to be exempted, only covering it with the broad description of a limited value, in specific articles to be selected by the debtor, if he sees proper to avail himself of the law, not when thc obligation was entered into, but after he has received the benefit of it and the time has come for its satisfaction. Under such conditions can the creditor be so thoroughly advised as to enable him to make the contract under the law on equal terms with the man who not only knows thoroughly his own means, but, what is frequently of more importance, his own intentions at the time he received the property of the other? This objection applies with less force to the homestead exemption, because, on account of the laws governing its benefits and also the record of land deeds, a better means of information as to real estate transfers is prevalent, than can be had of personal property, to which title may so readily pass by delivery.

But the worst results of the law, as it is, do not fall upon the creditors. Independence and self reliance are the foundation stones to the structure of true individuality, without which, first-class citizenship, in a free commonwealth, is impossible. The highest type of manhood scorns an obligation which it cannot reciprocate or repay. The debtor who takes refuge behind the

exemptions of the law, and especially under the provision which requires him to plead it, and is forced to schedule his property claimed under it, to a great extent is compelled to forfeit his self respect, under the consciousness that he has wronged his creditor. And thus begins a march toward callousness, by at first apologizing to himself, under the plea of necessity, for his conduct, and ends by becoming hardened to such an extent that he does not even want to pay the debt, and then deliberately goes about making other debts to settle in the same way. By this process his honor is smirched, his self reliance is broken down, his self respect is lost, and he becomes a parasite on society. Can such a man make a good citizen in a free government?

To protect themselves, merchants and tradesmen have procured the enactment of laws, which, without being more specific, may be summed up into what is known as the chattel mortgage system, and refuse to sell their property on credit unless protected by a mortgage, which usually covers everything the mortgagor has in sight, with a draft on futurity for all its possibilities of payment or disappointment; and to guard against the latter, resolve themselves into task-masters and usurers, setting a limit on the amount sold, but none in reason on the price charged. And thus the poor debtor becomes a slave, not so much to his own necessities as to the law, and bound hand and foot, as it were, without crime, is stripped of the refuge that was built for him, and drained of his sweat and blood to meet the exactions of the day, certain to come, when his relentless creditor shall sit in judgment and pronounce him guilty of shortness of crops, and consequently of purse, and condemn him to another period of involuntary servitude under a bill of sale executed by himseif.

And all this in the face of a constitutional provision which declares that he should have personal property to a certain value, to be selected by himself, exempted from execution; and another which says: "There shall be no involuntary servitude except as a punishment for crime."

But, says the creditor, it is not involuntary, because a man need not so bind himself unless he chooses to do so. There is no duress equal to a man's present and pressing necessities. Take an average Arkansas farmer to-day; he may or may not have worked under a mortgage last year; however that may be, his calculations have failed, drouth has cut short his crops, and low prices for what he has produced have still further discounted his ability to meet his obligations; his last dollar has gone to pay his taxes; there are some things which his family have been accustomed to have, which can only be procured at the stores; he hopes things will be better another year; he can't sell his live stock for money except at a ruinous sacrifice; the merchant holds out, as he thinks, favorable inducements; he signs the fatal mortgage—and his freedom is at an end. He can trade at but one place, and has practically nothing to say about the prices he is charged. A place where he could borrow money at usury would be an asylum to him—yet usury is unlawful. I have known men—laboring men, farmers and renters—to pay twenty and twenty-five per cent. interest for money, and secure its payment, rather than mortgage their property and buy supplies on credit. Those men thought they would be robbed by the merchants; the merchants expected to lose by some of their debtors, and thought they ought to make it up on others. Well, highway robbery has some advantages over other processes; the period of suspense is of shorter duration, the agony is sooner over, the loss has only been what was in sight, there is no lien on futurity to be foreclosed, there may have been a reserved fund that was not carried on the person.

The doctrine of reprisal is almost a part of man's nature. Under certain conditions it easily becomes so by provocation. In the practices I have attempted to describe, each party having lost confidence in the other's honesty endeavors to get the advantage for himself, and what ought to have been an ordinary business transaction, based on mutual confidence and

good faith in both parties, degenerates into a fight for the lion's share of a carcass.

And all this has grown out of a constitutional provision intended to be for the protection of the poor man. It is a mistaken kindness. If our theory of government is correct, if all men are born free and equal, and are, as they are presumed to be, sane, then they ought to be allowed, nay more, required, to transact their ordinary business affairs in their own voluntary way, and then if they make bad bargains let their property pay the penalty.

There is said to be honor among thieves. Gamblers pay their losses, and boards of trade enforce contracts made on 'Change with nothing in sight to base them on. Should public sentiment be less tolerant of the shortcomings of those who compose society?

There may be some public policy in a homestead exemption. That state would certainly be in a fair way toward prosperity in which every citizen had a homestead, or every several section of land had a homestead upon it. But if it is to be exempted, let it be totally exempt; beyond the power of the owner to encumber it except for the purchase money, and let each man's contracts be made on his manhood, backed by all his property except his homestead, and there would be a sounder standard of manhood to base contracts upon.

The Executive Committee, by its chairman, W. W. Smith, proposed the following names for membership, all of whom were received:

W. E. Atkinson,
B. B. Battle,
J. E. Borden,
J. M. Stayton,
R. B. Wilson,
H. G. Bunn,
W. C. Ford,
Jas. H. McCollum,
R. E. Jackson,
Dan W. Jones,
Jas. F. Read,
A. M. Wilson.

Recess until 3 o'clock, P. M.

AFTERNOON SESSION.

The Association met pursuant to adjournment.

W. S. McCain was introduced, who read the following paper on "Railroads as a Factor in the Law:"

PAPER OF W. S. M'CAIN.

Mythology tells us that Minerva sprang in full panoply from the brain of Jupiter. Almost as miraculous as this, has been the origin and development of railroads within the last three-quarters of a century. Many of our number who do not reckon themselves very old men can easily remember the day when the first railroad in the United States was opened for traffic. Since that time the progress made with this new agent of civilization has been on a most gigantic scale. To such an extent has this been true that our wisest statesmen and our most profound jurists have found themselves fairly bewildered in the effort to keep pace with the novel and difficult questions, which are constantly being presented by this new factor in the problem of modern government. The year 1830 may be assumed as the birth year of railroads, discarding the experiments of a few years preceding. Today the capital invested in railways is counted by the billions. Such a sudden and fabulous increase of wealth in any department of industry would have taxed the expansive powers of our laws and institutions, but when we consider that this progress has been made in a field almost, if not entirely, new, we can easily appreciate the strain to which the legislative and judicial departments of the government have been subjected. As we advance, the difficulties seem to increase rather than diminish. The truth is, that only within the last few years have we begun to realize the complexity of the problem. The first forty years of their history was a period of lavish favors towards railroad corporations, both on the part of the government and of individuals. Donations of lands, of money and of credit, were made with unstinted hand. If a franchise or other chartered right was

forfeited by any act of negligence or omission, it was generously waived by our legislators for the mere asking.

But the days of favor and of generosity have passed. We have entered upon a new era—an era of jealousy, mistrust and hostility. Both the people and the corporations have taken counsel as to their legal rights, and both are preparing to stand upon them. A few years ago the most successful demagogue was the man who proclaimed most loudly his friendship for railroads. Today nothing would dig a political grave so deep as the avowal of such a damning friendship. During this period of amity points of friction were easily adjusted, and the current of progress was seldom disturbed by legal proceedings. Within the last ten or twenty years, however, both the legislative and judicial departments have begun to feel the full force of adverse winds and waves. I think it would be difficult to exaggerate the gravity of the present situation, and now, that we are fairly out upon this sea of cross-currents, it is the part of wisdom to take a note of our bearings. While I shall make a feeble effort in this paper to bring out some of the more salient points of the railroad problem, I propose to content myself with asking questions, rather than answering them.

My first observation is the great impetus given to the law of private corporations by the introduction of railways. Corporations of this character were not unknown before the day of railroads, but their place in the law was comparatively insignificant. Railroads seemed to furnish food for these soulless beings to feed upon, and today the most important litigant in the courts is the corporation, and the most lucrative field in legal attainments is the study of corporation law. A corporation has always been known in the law as an artificial, invisible and intangible being, but the property of corporations has usually had a material existence. Inasmuch, however, as the principal property of a railroad company is its franchise, we now have the strange anomaly of an invisible person owning invisible property. Not only so, but the one is the most im-

portant person, and the other the most valuable property, existing under the government. This is a grand triumph of intellect. None but an intellectual people could thus create property and then create an owner. But being an intellectual product, it is naturally antagonized and menaced by the presence and contact of ignorance. Ignorant judges, ignorant juries and ignorant legislators, are the Goths and Vandals of these mighty products of intellectual genius.

I think it may well be doubted whether railroad corporations, as we have them organized, are in harmony with our republican form of government. There are several points of antagonism. Among others, I might mention the spirit of dependence and subjection which is necessarily fostered in the great body of employes who earn their daily bread in the railway service. Independence in thought and action is a desirable and important trait in the character of a citizen. A spirit of servility unfits a man for republican citizenship. The growth and prosperity of a republic depends upon the success of individual effort, and this individual effort needs to be stimulated by the hope and opportunity for expansion and promotion. The ordinary railroad employe has little to hope for in any direction. His horizon is not only fixed, but it is exceedingly narrow in compass. He is often sleek and well fed, but the marks of the collar are only too visible. But if the railroad employe is to some degree a slave, the employer is to the same degree a lord; and in a free government the latter is equally as obnoxious as the former.

Another feature of railroads is their hostility to the Sabbath. The recognition, if not the maintenance, of the Sabbath has always been an integral part of the municipal law. While I believe that the individual should regard the Sabbath as something more than a day of rest, the State perhaps should go no farther. I do insist, however, that the State owes it to the laboring man to see that he is allowed one day out of seven to rest. The power of the State over corporations in this regard is peculiar, and I think should be exerted more fully.

The railroad, however, in a country of such vast dimensions as ours, seems to present insuperable difficulties on this subject. Nothing has done so much to promote disregard of the Sabbath, and yet the remedy is not entirely patent.

The dangers to which I have alluded, however, are insignificant when compared with the corrupting influences which must inevitably flow from such vast monopolies of capital as our railroad corporations are producing.

It is interesting to consider that while the constitutions of our own and sister states sound the note of alarm with regard to monopolies, yet with singular inconsistency they provide for the encouragement of railroad corporations, a form of monopoly the most offensive and dangerous that civilization has ever known. From the very nature of their organization railroad corporations aggravate to the highest degree possible the irrepressible conflict between capital and labor. The problem of maintaining the proper relations between capital and labor is troublesome enough at best, but our railroads multiply the complications by many times. An ordinary contest between an individual employer and his laborers could hardly be felt beyond the circle of the immediate persons involved, but here we have a vast amount of accumulated money on the one hand and an army of employes on the other. When these grasp each other by the throat, in furious combat, the titanic conflict causes the very foundations of our government to tremble. Even when peace is restored between the combatants, it is little else than a truce liable to be broken at any moment.

These disturbances between capital and labor are only less serious than a civil war itself. The public convenience and the public interests are so blended with and dependent upon the railroads of the country, that anything which affects these arteries of commerce necessarily affects the entire country. And yet when these disturbances occur the law seems powerless to interfere, however much the public may be concerned. Railroad companies may decline to pay, and laborers decline to

work, thus stagnating the commerce of the country by the stopping of trains, and yet there is no relief. This state of affairs is not only anomalous but it is portentous of national disaster.

The truth is, our railroad corporations have become a vast *imperium in imperis*. Their power to declare war and make peace seems to be entirely beyond the control of the State, however preposterous this may appear. While the evil is acknowledged, no one has yet been able to propose an acceptable remedy. Of all the remedies yet suggested, State management would perhaps prove the most efficient so far as the labor question is concerned. If the railroads were operated by the State, and the conductors and engineers should thus become officers of the State, dependent upon the vote of the people for their position and their wages, strikes from this quarter would be at an end. Imagine a strike of public officials! Suppose the sheriffs or the United States marshals should strike and refuse to work without an increase of wages! But while this and many other evils connected with our railroad management might be remedied by State ownership and control, yet the dangerous possibilities of any treatment so heroic are enough to appal the boldest statesman. If we were as fully alive, however, to the dangers of corporate ownership, as we are to State ownership, we could no doubt exercise a better judgment. We may escape responsibility by declining to assume it, but it does not follow that this is the best or safest course to pursue. It is not entirely clear that the management of a public trust so important as that of operating a railroad, can be most safely committed to private individuals. If in our progress as a people we have conceived and brought forth such a powerful agent as the railway, it would be quite remarkable if we still remain so feeble in administrative ability that we cannot safely control our own offspring.

In the United States a formidable obstacle to the control of our principal railways is presented by our state lines. For many years after the introduction of railroads the several roads

were principally confined to the limits of the particular state by which they were chartered. When the roads began to be extended across the state lines, various devices were resorted to on the part of the legislatures and of the courts, to preserve the sovereignty of the state without losing the advantages of a continuous line of transportation. One method was for the respective states, whose boundary lines were intersected, to issue charters which were the counterparts of each other. The courts, on this point, have labored under peculiar difficulties. The state courts cannot be authorized to extend their jurisdiction beyond the state lines. So far, the jurisdiction of federal courts has also been confined within the boundaries of the respective states, though it is, perhaps, within the power of congress to make their territorial jurisdiction co-extensive with the Union. In their efforts to properly adjust the rights of all persons interested in these interstate railways, it is often found essential to control and to make sale of the entire line. Different methods have been adopted for this purpose, and some of these various methods, in the absence of the grave emergency that calls for their adoption, would otherwise seem to be curious and absurd enough. Take for instance the Texas & St. Louis R. R., running through two different states, and now in the hands of two different courts. The judges are entitled to our sympathy, in view of their inability to follow the road across the state line, and to our commendation for the clever manner in which they have so far, by negotiation and comity, escaped the insuperable difficulties in their pathway. While the method adopted by these courts seems to be the only resort, its awkwardness, not to say its absurdity, is patent. The truth is that, so far as interstate railroads are concerned, it is quite impracticable to preserve the existence of state lines. If a court, in selling railroad property or putting it in the hands of a receiver, cannot proceed until other courts of co-ordinate jurisdiction are consulted and placated, and if the entire proceeding must be carried on by treaty and negotiation between the courts, this amounts to an abdication of the judicial function. Such a proceeding is not a judicial proceeding at all.

For the present there seems to be no other way of circumventing the obstacle in the way, and it is well that our courts have so far been able to act in harmony in these matters. It remains to be seen whether the legislative or the judicial department shall cut the Gordian knot—the legislative by some express enactment, or the judicial by some radical departure from the precedents, such as was taken in the extension of admiralty jurisdiction over the inland rivers. State lines have been regarded as very sacred landmarks in our confederation, and it will require an impious hand to obliterate them to the extent that seems to be required by interstate railways. Congress would, no doubt, have the authority to take charge of all the interstate railways and have them conducted as exclusively federal agencies.

The centralizing effect of this, however, is a serious objection. In fact, their tendency to centralization is a noticeable, and it seems an inevitable evil, of railroads. They not only centralize capital and labor, as we have shown, but they centralize population and intelligence. The urban population is increased by draining the rural districts. The more intellectual employments, and especially the legal business of the country, is thereby concentrated at the great commercial and railroad centers. Many members of this Association can recollect what may be called the saddle-bag days of the profession, when the successful and most highly honored members of the bar rode the circuit on horseback. The most lucrative fees were then found in the country courts. At that time the federal court was comparatively unknown, and the litigation was distributed among the several state courts. Strong lawyers were then to be found in every part of the State. Now, this is to a great extent changed. The country court-house is deserted. The railways have brought the litigants and the litigation to town, and the lawyers have been compelled to follow suit. In a republic the people must depend largely upon the lawyers for their political education, as well as for the maintenance of their rights, and it is no small loss to the people of any com-

munity to be deprived of an able and upright counselor, the public impression to the contrary notwithstanding.

Another interesting feature of the railroad corporation is its antagonism to the jury system. The trial jury and the railroad corporation are sworn enemies. While I am not wedded to the jury system, just as we have it, I am nevertheless persuaded that it would be difficult to find any satisfactory substitute for this time-honored appendage of the court. A jury is the best tribunal to determine the issues of fact ordinarily presented between neighbors in the court. My experience is, that juries discriminate better and much more reliably, in determining issues of fact, than judges. Of course, a good judge is better than a bad jury, but a good judge very rarely has a bad jury. There are several reasons why a jury is safer than the court on questions of fact, but I will content myself here with giving but one, and that is, that in the multitude of counsel there is safety. But although trial by jury is perhaps the best mode of settling the ordinary controversies between citizens, especially citizens of the same community, yet, so far as suits by and against railroad corporations are concerned, there is in the jury a remarkable want of adaptedness. In the course of my practice I have witnessed jury trials in railroad cases by the score, but I have never yet known a disputed issue of fact to be decided by a jury in favor of a railroad corporation. Of course, I do not mean to include in this statement that considerable class of cases in which the plaintiff fails to make out his case, and a verdict is rendered under peremptory instructions, as, on a demurrer to the evidence. I mean to say, that where the evidence is conflicting as to the facts, the verdict is invariably against the corporation. The observation of other practioners may furnish an isolated case here and there as an exception to this rule. I can imagine that some cases may be cited where the verdict has followed the overwhelming current of testimony in favor of the corporation, even against a small amount of conflicting evidence, but if such cases can be found they are only exceptions going to prove the strength

of the general rule. It would be interesting to hear from the other members of this Association as to their observation on this point.

Assuming this proposition to be true, that where the evidence is conflicting the verdict is always against the corporation, it is somewhat difficult to account for it, though several reasons suggest themselves. One is, that corporate rights, like corporate existence, cannot be understood or appreciated by any except citizens of the highest intelligence. This class of citizens are generally in the minority on our juries. Another reason is, that juries act largely from sympathy (and the sympathies of a good man are very apt to be on the right side), but a corporation having neither soul nor body has little upon which the sympathies of the jury can take hold. Other reasons might be given, but the reasons are not to my purpose. I propose to deal only with the fact. If we had resident stockholders of railroad shares, as they do in Massachusetts and New York, their influence would no doubt be felt in the jury-box, but all our stockholders are non-residents, and a non-resident is at a disadvantage in any case before a local jury.

If juries always decide railroad cases in a certain way, which can be determined with mathematical certainty beforehand, the question naturally arises why should the parties and the public be at the trouble and expense of a jury trial in this class of cases. Is it not the merest child's play to waste time on a trial when you know the result beforehand? I have known more than one justice of the peace who decided every case in favor of the plaintiff. This is a rule which I have found exceedingly convenient and satisfactory. The law is sometimes said to be uncertain, but this rule does away with all uncertainty and reduces the administration of justice to an exact science. I would not like to bring a suit before a justice who might possibly decide in favor of the defendant. For the same reason no lawyer suing a railroad corporation can afford to submit the facts to the court. To do this would involve the result in some

degree of uncertainty, and such a course would betray unpardonable stupidity on the part of the counsel.

It is thus easy to account for the fact that railroad corporations are such implacable enemies of the jury system. It is safe to say that, if these corporations should ever acquire sufficient power and influence with the legislative department, they would strike a blow at the whole system. As it is important to preserve both—the jury system and the railroad corporations—it might be well to continue jury trials in ordinary cases, and establish a separate tribunal for railroad cases. Something has already been done in this direction in other states. Several of the states have established railroad commissions, with more or less limited powers, and these bid fair in their growth and development to repeat the history of courts of equity. It is not unreasonable to believe that they might with satisfaction be made to assume the place in railroad cases that courts of admiralty occupy in marine cases. The experience of centuries testifies in favor of our marine courts, and reasons quite innumerable could be urged in favor of such a court in railroad cases.

If the common law courts are to retain their jurisdiction in these cases, it would lend speed and simplicity, and otherwise accomplish much good, without any detriment that I can see, to let the case be heard on affidavits before the judge, and if the plaintiff produce any evidence to support his allegations, to let the allegations be taken as true, and judgment be entered accordingly, without hearing from the defendant. Even the railroad corporations could well afford to favor such a law, as it would not only save the trouble and expense now consumed in jury trials, but it would do away with the prejudices which these jury trials tend to excite.

But even with a statute that judgment should be entered for the plaintiff, when he could make it appear that he had evidence tending to prove the issues on his part, it would still be necessary in many cases to have a jury to assess the damages.

This would be especially true in actions for torts. In the matter of compensation for torts the law was always painfully uncertain. This uncertainty, however, has been largely increased by amending the statutes so as to allow actions for tort to survive. As to the measure of damages in this class of cases there seems to be no rule. The highest courts in the land have frankly confessed as much. The difficulties on the part of the court in formulating a rule are well understood and quite insuperable, and yet it is unworthy of our intelligence that in a matter of such importance there should be absolutely no law at all. In some of the states the matter is partially regulated by statute. Criminal statutes almost universally fix the maximum and minimum limits to the penalty, and there would seem to be quite as much reason for fixing the limit of damages in torts of this kind as in criminal cases.

Perhaps no one of the many railroad problems in the law is of more vital importance than the question as to what rights railroad corporations have in railroad property. This is a question of the hour, and it is looming up before us in huge proportions. When a railroad corporation is chartered to construct a railroad, what right, if any, does the constructing company acquire to the road, including the stations, bridges, and other immovable fixtures? While this is a matter of such tremendous consequence, it is quite remarkable that up to this moment it has scarcely received a thought by either jurist or statesman. It is almost entirely ignored by all the text writers on railroads. Many railroad charters must expire before a great while, and a forfeiture is liable to occur at any time. No provision has yet been made by statute for either one of these events.

I assume that so far as stockholders are concerned their rights in the property of the corporation are precisely the same, whether the franchise has expired or been forfeited. In both instances the property is to be distributed in the same manner as that of an expired partnership, creditors, of course, having the prior right. That the rolling stock and other per-

sonal property of a railroad corporation should take the same course as the property of other corporations perhaps no one would deny. By special provision of our Constitution, the rolling stock of railroads is declared to be personal property, but this is only declaratory of what the law was before.

Whether the constructing or operating corporation has any right to the road-bed, depots, etc., has undergone but little discussion as yet. By special correspondence and otherwise I have attempted to secure the opinion of a number of distinguished lawyers and statesmen on this point; but, strange to say, no opinion seems as yet to be formed. A neighbor of mine was on a visit to his old home in Alabama some time since, and found a railroad whose constructing company had been chartered about 1835, for a period of fifty years. He reported the prevalence of some local excitement, growing out of the conflicting claims which were being advanced in view of the expiration of the charter. The land owners were claiming the right to plow up the road-bed, and plant it in potatoes, while the constructing company were claiming the right to remain in custody of the road and to operate it without a charter.

This problem seems to present some difficulties, yet if the ordinary rules and analogies of the law be followed, it appears to admit of but one solution. Our Constitution declares all railroads in the State to be public highways. A public highway cannot be private property. Being public highways, the property of the citizen is seized and appropriated for their construction. The law does not allow this to be done in behalf of private individuals or private corporations. The only trouble is that the practice on this subject has run counter to principle. I do not mean the practices of the railroad companies, but I mean that of the lawyers, the courts and the legislatures. Some of these practices I will notice later on. Only one will be referred to at this point.

Take the right of eminent domain. We know that this right can only be exercised by the sovereign state. And yet

at every term of the court we find suits brought in the name of railroad companies to condemn the property of citizens. This practice should be abandoned, if for no other reason than to inculcate among the people the true idea, that no one but the State can take the property of the citizen.

But if the road-bed, including the iron, ties, bridges and depots, belongs to the State and not to the constructing corporation, it must not be inferred that the constructing company has no property except the rolling stock. Suppose, for instance, the legislature should want an iron bridge built across a large stream for the convenience and accommodation of the public. This might be done with the public money; but suppose, as has been often the case in this State, an individual or a company of individuals should offer to build the bridge for the State in consideration of a right to collect tolls from persons and property crossing it for a given period, say of twenty years. When the bridge is built whose property is it? When the twenty years have expired who is entitled to its exclusive control and custody? When the builder has collected tolls for the full period stipulated in his charter, has he not obtained the full consideration for which he undertook to do the work? Would it not be a remarkable demand for one whom you had employed to build you a house, to demand of you the house after you had paid him his own price for building it? Such a toll bridge, I take it, is a public highway and is the exclusive property of the State. The right which the builder has to collect tolls, or, as it is called, his franchise, is valuable property, and ought to be subject to assessment for taxation and to seizure on execution; but it is invisible and intangible property, and is an entirely different thing from the bridge. The value of this franchise has no relation, whatever, to the cost or the value of the bridge. If you were going to buy a toll-bridge franchise, you would feel no interest in what the bridge had cost, or in what might be its value. You would only want to know the amount of the present and prospective receipts, and the length of the unexpired term, with the probable expense of repairs.

The same rule would seem to apply to railroads, if they are public highways, as our Constitution declares. The constructing company undertakes to build the railroad as a public highway, in consideration of a privilege or franchise to collect tolls. The time which such franchise has to run depends upon the agreement of the parties as evidenced by the charter. Our present general railroad law fixes the period at ninety-nine years. This has been a favorite period for limiting railroad charters, though many have fixed a shorter time, and some of the older companies in the sister States have a perpetual franchise.

If this is the correct view of the constructing company's right, then the whole problem becomes simple enough, so far as its legal aspects are concerned. With this view the right to condemn becomes clear, because the property is taken exclusively for the State and the constructing company has no interest in it, except the interest which every contractor has in the possession of the property upon which he has contracted to work, and from the profits of which he expects to receive his compensation. Of course, the proceeding to condemn should be in the name of the State. So, if the land owner dedicate the right of way the deed of dedication should be to the State, not to the constructing company. The constructing company have no right to the land and no use for it. When they have enjoyed their franchise for the time stipulated in the charter the road passes into the exclusive custody and control of the State. The rights of the constructing company are somewhat analogous, though not entirely similar, to those of that numerous class of colored tenants in this State, who enter upon wild land, agreeing to bring it into a state of cultivation in consideration of the right to enjoy the annual crops for the period of five years.

If this is not the law it ought to be the law, and the sooner it is made so the better. In France it has been the custom to charter railroad companies for the period of one hundred years, but the charter, or, as they call it, the concession, always con-

tains a stipulation that at the expiration of the one hundred years the road shall become the unincumbered property of the state. This stipulation is perhaps mere surplusage, though it must be admitted that a question of such importance should not be left in doubt.

I know of but one instance in which the question has been directly presented for adjudication in the courts. That adjudication was had in Pennsylvania many years ago. The legislature of that state having passed an act declaring the forfeiture of a certain railroad charter, the governor was authorized to appoint an agent to take charge of and operate the railroad for and on behalf of the state. The constructing company brought a bill to enjoin this agent from taking charge of the road, alleging it to be the property of the stockholders. The supreme court of the state denied the relief prayed for, and in the course of their opinion said:

"Money, goods or lands, which are or were, the private property of a defunct corporation, cannot be arbitrarily seized for the use of the State, without compensation, paid or provided for. Under this act, however, the agent of the State takes nothing but the road. Is that private property? Certainly not! It is a public highway, solemnly devoted by the law to public use. When the lands to build it on were taken, they were taken for public use; otherwise they could not have been taken at all. It is true the plaintiff had a right to take tolls from all who traveled or carried freight over it, according to certain rates fixed in the charter; but that was a mere franchise, a privilege derived from the charter, and it was gone when the charter was repealed. The State may grant to a corporation or to an individual the franchise of taking tolls on any highway, opened or to be opened, whether it be a railroad or river, canal or bridge, turnpike or common road. When the franchise ceases, by its own limitation, by forfeiture or by repeal, the highway is thrown back on the hands of the State, and it becomes her duty, as the sovereign guardian of the public interests, to take care of it. She may renew the franchise, give

it to some other person, exercise it herself, or declare the highway open and free to all the people. If the railway itself was the private property of the stockholders, then it remains theirs after the expiration or forfeiture of the charter, and they may use it without a charter as other people use their own property; run it on their own account, charge what tolls they please, close it or open it when they think proper; disregard every interest except their own. The repeal of charters on such terms would be courted as a favor by every railroad company in the State, for it would have no other effect but to emancipate them from the law. A repeal or forfeiture of its charter would 'put length of days in its right hand and in its left hand riches and honor.' But it is not so. Railroads made by authority of the State, upon land taken under the right of eminent domain, and established by her laws as thoroughfares for the commerce that passes through her borders, are her highways. No corporation has any property in them. Such a highway is not private property any more than a public office is private property. In either case, if the public trust be abused it may be withdrawn; but neither the highway nor the office is thereby extinguished. The removed officer has no right to keep the records, and the removed company has no right to keep the road."

The theory of exclusive ownership of the roadway by the State has thus the merit of simplicity. It harmonizes not only with the Constitution of the State but with all the analogies of the law, and with the fundamental principles upon which our republican institutions are founded. On the other hand it has been claimed that a railroad, like a bank building or a manufacturing plant, is private property, and owned exclusively by the stockholders of the constructing corporation or its successors. It is well known that this theory at one time was pressed to such an extent in some of the northwestern states that it was decided by the highest state courts that no tax could be levied to build a railroad, and that municipal aid for that purpose could not be granted, either by subscribing stock or issuing bonds.

But this theory that a railroad was a private enterprise was exploded by the Supreme Court of the United States, and has since been abandoned in all the states. There is now some disposition to claim that the constructing company have a qualified ownership, or a joint ownership with the State, in the road-bed. This theory seems to have nothing to rest upon except the inability on the part of some persons to conceive how a corporation should have an exclusive right to collect tolls on a highway to which they have no title whatever. This same obtuseness prevented Davy Crockett from seeing how a county seat could be moved by the legislature.

But while the true theory as to the ownership of railroads would thus seem to be simple enough, it must be conceded that it has been entirely disregarded in practice. Our legislature, for instance, has required that the road-bed, depots, bridges, rails and ties, be assessed for taxation by the railroad companies as their property. This is a very dangerous concession. If these things are the property of the State they are not subject to taxation. It would be quite as sensible, I should say, to require the sheriff to give in the court-house as his property for taxation. It is very important to have revenue, but the State cannot afford to give away her most valuable property to get somebody to pay taxes on it. Unless this point is to be yielded, only the rolling-stock of a railroad and its franchise should be taxed.

Under the present revenue law of this State the franchises of railroads are not taxed at all. The right to exist as a corporation is itself a franchise, but with our present statute this franchise has of itself no great value. The franchise to collect tolls, however, on some of our railroads is worth more than all the iron rails, ties, depots, bridges and tunnels put together. So that it would not necessarily decrease the revenues of the State to have the railroad companies assess and pay taxes on the property which they really own, instead of paying upon that which is owned exclusively by the State.

If this view is correct, it follows that a railroad company cannot mortgage the road-bed and other fixed property which it occupies, and when an execution is levied, or a decree of sale is made, this property should not be embraced in the sale. If a judgment were entered foreclosing a mortgage on the Iron Mountain Railroad in one of our courts, only the rolling stock and franchise should be sold. It must not be supposed that this franchise would sell for nothing. If it were publicly announced by the commissioner making such sale that only the franchise of this road for an unexpired term of seventy-five years was being sold, there are members of this Association who would gladly bid $10,000,000 or even $20,000,000 for this franchise, and run the risk of an attachment for failing to make good their bid.

If the rights of the constructing company cease with the expiration of their charter, the State should look forward to the termination of these charters with the same degree of interest that a reversioner looks forward to the expiration of an intermediate estate for years. Suppose you had let a tract of wild land to a tenant for five years, in consideration of his reducing it to a state of cultivation. You would anticipate with interest the expiration of his term, in order that you might enter upon the enjoyment of the profits. Now, if some creditor of your tenant, just before the expiration of his term, were to levy an execution upon his estate, and you were to voluntarily offer to the execution purchaser, without any consideration, an option to extend the term for a new period of five years from the date of the execution sale, would you not justly be regarded as a lunatic and incompetent to manage your own property?

And yet this very thing was done by our legislature, when they enacted that, whenever a sale of a railroad was made, the purchasing company might re-organize under the general railroad act, not for the unexpired term, but for a new and full period of ninety-nine years. The old Spanish cavalier, Ponce de Leon, sought in vain for the legendary fountain of youth, but such a fountain was, by this act, provided for railroad cor-

porations. It is easy to predict that so long as this act remains upon our statute book, no railroad charter will ever expire in this State, since a new lease of life can be obtained by merely submitting to a judicial sale.

Since our legislators by their repeated action have shown their suicidal antagonism to what we have indicated as the true theory of railroad property, it is not surprising to find that railroad stockholders are willing to claim all that is conceded to them. It would seem to be quite excusable in them, under the circumstances, that they should take deeds to themselves for the right of way, mortgage their road-beds, and even pay taxes on it. Almost anybody would be willing to pay taxes on a railroad if the State were to make him a donation of one.

Conceding that the corporation has a property right in the road and other fixed property, what is to be done with this when the charter expires? Is it to be run without a charter? No one, perhaps, will be so bold as to claim this. Then if there must be a renewal or extension of the charter by the sovereign, to justify the further running of cars, on what terms shall it be granted? Shall it be donated? What legislature would dare to propose such a donation? If the renewal or extension is to be granted for a consideration, how much shall be demanded? The right to demand anything would seem to imply a right to demand all that can be obtained. When the Iron Mountain charter expires millions can be had for a renewal. Shall this be refused or accepted? Some of us will live long enough to see these questions answered. Especially may we see them answered as to our street railways, some of whose charters are limited to twenty-five or thirty years.

Since a railroad is a public highway, some have contended that the constructing or operating corporation is a public corporation, and that the agents and servants of the company are *quasi* public officers, but I can see no reason for putting a railroad company on a different footing from any other private corporation. Like a bank of issue or a mail rider, they are discharging certain duties, but in doing so they are mere

contractors, doing for the public what the public has chosen to be relieved from doing for itself.

When the railroad charters expire the State may elect to do the public transportation by her own officers for that purpose selected and appointed. I am persuaded that this will prove to be the better way, though this of course remains to be demonstrated. In continental Europe a large number of the railroads were built and have always been operated by the government, and within a very recent time governmental control and ownership have been together extended by the purchase of other lines.

While the constructing company or the successor to its franchise is a mere contractor and not a public corporation, the State is none the less interested in the manner in which the work is performed. For this reason our present State Constitution reserves the right to modify all railroad charters as the public interest may demand. This provision seems to place railroad corporations very much in the same attitude as the holders of State bonds, that is to say, without any remedy except the honor and good faith of the people so far as the maintenance of the contract is concerned.

If the policy is to be continued of having railroads built and operated by private corporations, I submit that a closer relation should be established between these corporations and the State. The State should regulate the management of railroads with greater particularity, even to the smallest detail. The State should be thoroughly advised as to every dollar received and paid out by her railroad corporations, since without this no intelligent action can be had. So, on the other hand the State should see that railroad stockholders are assured a reasonable compensation for their investment as far as this can be accomplished by State legislation. Wherever a railroad is found whose stockholders are not making as much as three or four per cent. on their investment, the reputation as well as the prosperity of the State is in jeopardy, and all possible relief should be administered. If necessary the tariff rates on freight

and passengers should in such case be advanced. Struggling roads should be protected in all cases from the ruinous effects of competition. The legislature should see that no competing railway should charge less than a fixed amount for freight. The fixing of a minimum is quite as important as the fixing of a maximum rate of freight. Both are highly important. The State should never stand by and see one corporation cut another's throat. Every time a railroad corporation is bankrupted it is a blow at the progress and prosperity of the State. In fixing the rates of freight it is supreme folly to adopt a procrustean rate, applicable alike to the prosperous and the unprosperous roads. All citizens should be treated alike, but railroad corporations being the mere creatures of the State, each particular road ought to be treated as the interests of the people and justice to the stockholders may demand.

Again, railroads ought to be held up to the prompt and speedy discharge of all their liabilities; but being State and not local institutions, they should be protected from local prejudices and influences. They should never be turned loose to engage in Kilkenny cat fights with individuals. They should be controlled and regulated in every particular, but they should never be abandoned to the tender mercies of an ignorant jury, or a corrupt municipality. I have already alluded to our present statute for taxing railroads, the statute by which the railroad companies are required to pay on the property owned by the State, but not to pay on their own property at all. The present statute, I contend, is for the reasons indicated unconstitutional, but I think it may be doubted whether the Constitutional plan of assessing railroad property—according to its value—is the best that could be adopted. Inasmuch as we want to encourage railroads and discourage monopolies, I am persuaded that railroad corporations should be taxed according to their prosperity. A railroad company that does not make 4 or 5 per cent. on the capital invested, ought not to pay anything, and one that makes more than this ought to be required to pay the entire excess into the State treasury. This

would encourage the building of new roads, and the prosperity of her railroads would thus become the prosperity of the State.

In the matter of taxation there is no analogy between the rights and duties of an individual and of a railroad corporation. An individual ought to be allowed and encouraged to make all the money that he can honestly; while the accumulations of a railroad corporation, over and above a fair remuneration to the stockholders on their investment, ought to be enjoyed by the State. The collection of tolls by railroad companies is, itself, a species of taxation. To have these tolls collected from the people by the railroads, and the railroads pay back to the people through the public treasury, is, to some extent, traveling in a circle. A more simple and inexpensive method would be to reduce the tolls. The whole question of railroad taxation is full of difficulties, but for a "delusion and a snare" I know nothing that equals our present method, unless it be that system of national taxation, which is sometimes spoken of as protection for the sake of protection.

The paper of Mr. McCain was generally discussed by the members.

The hour for the election of officers having arrived, J. M. Hewitt was unanimously elected President.

Upon motion, a committee of three, consisting of S. W. Williams, Jacob Trieber and the Secretary, was appointed to select the Vice-Presidents, and make report at tomorrow morning's session.

The Association adjourned until 10 o'clock, Thursday morning, January 7, 1886.

THURSDAY, January 7, 1886.

The Association met pursuant to adjournment, W. H. Cate presiding.

The first order of business being:

THE ANNUAL ADDRESS, BY H. C. CALDWELL.

Mr. President, and Gentlemen of the Bar Association:

In discussing the relation of debtor and creditor, it will be appropriate to introduce the subject by a brief reference to some ancient laws.

By the Roman law of the twelve tables, a creditor, after some preliminary formalities, might scourge his debtor to death; and if the debtor had several creditors they were allowed to cut his body to pieces, each of them taking a share proportioned to the amount of his debt; and if the creditors did not resort to this horrible atrocity, they were authorized to reduce him to slavery, and subject him to chains and stripes, or sell him and his wife and children into foreign slavery.

The law of debtor and creditor in Athens, prior to the time of Solon, was as harsh as the ancient Roman law, except that it did not permit the creditor to kill his debtor. These cruel and oppressive laws produced their legitimate fruit. The cultivating tenants and small farmers, weighed down by debt, were first deprived of all property, and finally, with their families, reduced to slavery. This process went on until the small land owners and tenantry were converted into slaves, and there grew up but two classes in the state, the large land and slave owners, and slaves, or debtors having no other prospect except slavery.

Between the arrogant profligacy of the wealthy few, and the discontent and indifference of the enslaved debtors, the State was about to perish. In its extremity it was saved by the wisdom and justice of Solon, that greatest and wisest of ancient law givers. He abolished imprisonment and slavery for debt, set free all who had been adjudged slaves for debt,

and canceled all contracts in which the debtor had borrowed on the security of either his person or his land. At that time, in Athens, a mortgage consisted of a stone pillar erected on the land, inscribed with the name of the lender and the amount of the loan. Satisfaction of these mortgages was entered by pulling them down.

Solon prevented a recurrence of the former evils; and the means by which this was accomplished deserves special attention. He declared that it was essential to the prosperity and security of the State and its people, that families should be securely maintained in their homes, that the ties and memories of home were the best incentive to patriotic action, and to a faithful discharge of all the public and private duties of the citizen, and that it should therefore have permanence, and not be lost or imperiled by the vicissitudes of fortune happening to its owner. To give effect to this obviously sound principle of political economy, he ordained that no mortgage of the patrimony, the home of the family, should be of any validity, and men's homes were no longer menaced by mortgage pillars in their door-yards.

Here we have a model for a homestead law of some utility and efficacy. Considering the age in which he lived, the wisdom of Solon's laws fills us with astonishment and admiration, and we can well understand why it is that for twenty-five centuries history has handed down his name as the wisest law giver and legislator of ancient times.

Five centuries after Solon's wisdom had restored life and vigor to Athens, and given prosperity to its citizens, Cæsar performed in some measure, a similar office for Rome, and by similar means. He proclaimed the fundamental truth that freedom was a natural and inalienable right, that could not be bartered away as property, for the security of a debt. The right of the State to deprive the citizen of his liberty, as a punishment for crime, was conceded, but the non-payment of a civil debt was declared not to be a crime against the State.

Cæsar was the author of the first bankrupt law, by which an insolvent debtor, by making an assignment of all his property to his creditors, was relieved of the burden of his debts.

IMPRISONMENT FOR DEBT.

The early and barbarous notion that inability to pay a debt was a crime, to be punished by imprisonment at the pleasure of the creditor, continued down to a comparatively recent date. As late as 1828, six thousand persons were imprisoned in London for debt, and in the space of two and one-half years ending with the year 1827, seventy thousand persons were arrested for debt in and about London, at an expense to the parties of $1,000,000. It was not until the year 1844 that imprisonment for debt was abolished in England.

The older States of the Union inherited this cruel and suicidal policy from the mother country. In most of them imprisonment for debt was abolished within the memory of men now living, and in one or two it still exists in a modified form. The law of imprisonment for debt proceeded on the idea that all creditors were honest, and all debtors dishonest, an assumption the converse of which would probably be nearer the truth.

It presumed every man solvent and able to pay his debts, a presumption in innumerable cases directly against the truth. It treated the non-payment of a debt as a crime. But the punishment for this supposed criminal act was not prescribed by law, nor inflicted in pursuance of the verdict of a jury and the sentence of a court.

If one man acquired the money or property of another by some confessedly criminal act, such as theft, robbery or forgery, the law fixed a limit to the punishment of the thief, robber or forger, and that punishment, in the assessment of which the injured party had no voice, could be inflicted only after it had been decreed by an impartial court. But the inability to pay his debts, though the result of accident or misfortune, against which no human foresight could provide, subjected the debtor

to imprisonment for life; a punishment which the law did not inflict, except for the greatest crimes; and this punishment was inflicted at the arbitrary discretion of the creditor, who was at once party, jury and judge. A real criminal could appeal to the executive power of the state for a pardon, but the insolvent debtor was denied that privilege, and could appeal for pardon to his creditor alone.

The logical inconsistency of the law was demonstrated when Mr. Burke asked: "If insolvency be no crime, why is it punished with arbitrary imprisonment? If it be a crime, why is it delivered into private hands, to pardon without discretion, or to punish without mercy and without measure?"

In an economic view the law was equally indefensible. How a debtor, stripped of all his property and deprived of his liberty, was to acquire means to pay his debts, was never explained. His labor was lost to himself, to his family, to his creditor, and to the state. He became a charge upon his creditor, and not unfrequently his family a charge upon the public.

As repugnant to reason and justice as that law now appears to all of us, it was only overthrown at the end of a long and severe struggle.

Lord Chancellor Thurlow, in debating the question in the house of lords, said: "If there is to be such a thing as imprisonment for debt it ought to continue unchecked and unrestrained, unless in cases of flagrant oppression and unnecessary cruelty. The general idea, that humanity requires the intervention of the legislature between a debtor and a creditor, is a false notion, founded in error and dangerous in practice. Your lordships had better direct your attention to other subjects than to defrauding the creditor of the chance of recovering his property by letting loose his debtor and taking from him the very hope of payment." The friends of imprisonment for debt confidently predicted its abolition would be followed by a uniform indisposition and refusal to pay debts, a total loss of credit, general stagnation in business and other dire calamities.

But history and statistics show that its repeal strengthened credit, increased the disposition and ability to pay, and the number of those who remained permanently insolvent was greatly diminished.

THE BEGINNING OF THE STRUGGLE FOR EXEMPTIONS.

Its abolition, however, did not remove from men's minds the idea that a debtor was, in some measure, to be looked upon as a criminal, deserving no protection from the law, and entitled to no consideration at the hands of his creditors. And it was vehemently contended that if the debtor was permitted to enjoy his life and liberty, nothing more could in reason be claimed for him; that all his property, at least, should be liable to seizure to pay his debts. At this point was begun the struggle now going on over the amount of property that a debtor shall be permitted to retain free from the demands of his creditors. Those who oppose exemptions do so on the assumption that a debtor's first and highest obligation, under all circumstances, is to his creditors, and that this duty requires that he shall be compelled to yield up all his property, if need be, to pay his debts, regardless of the results to the state and his family, and to those of his creditors whose debts remain unpaid after his property is exhausted. The effect of such a law is to deprive the debtor of the means of support, and put it beyond his power to pay his debts. If he is left in the possession of sufficient property to afford him the means of supporting himself and family, and paying his debts, he will do so. But how is a farmer, deprived of his land and farming implements to live, much less pay debts? Or how are mechanics, doctors, surgeons and teachers to pursue their respective callings after their tools, books and instruments are taken from them?

One of the tasks imposed by the Egyptians on the Israelites was the making of sun-dried bricks, which could be made only by mixing straw with the clay.

"And Pharaoh commanded the same day the task-masters of the people, and their officers, saying . . .

"Ye shall no more give the people straw to make brick, as heretofore. . . .

"And the task-masters hasted, saying . . .

"Go therefore now, and work, for there shall no straw be given you, yet shall ye deliver the tale of bricks."

The order was impossible of execution. It was communicated to Moses and Aaron, and by Moses to the Lord; and Pharoah was drowned; and this unreasonable exaction upon the children of Israel to make bricks without straw, was one of the principal counts in the indictment against him.

I commend this case to the careful consideration of those who advocate the policy of selling all the property a poor debtor has for half its value, and dividing that half up between the justices, constables, clerks, sheriffs, marshals, lawyers, and a single rapacious creditor, and then demanding of the debtor that he pay the balance of his debts, and denouncing him as a rogue because he cannot.

The coercive power of the law, for the collection of debts, is not the basis of credit. The foundation of the credit by which the commerce of the world is carried on, is confidence in the honesty, business capacity and probable ability of the debtor to meet his engagements. The richest man in Arkansas could not buy, on credit, a bill of goods in St. Louis or New York, if it was known that he would not pay, except at the end of an execution.

On the other hand, hundreds of men, whose only capital is their known honesty, good habits and business capacity, obtain ready credit at home and abroad.

The cumbersome, expensive, uncertain and wasteful machinery of the law, for the collection of debts, is abhorrent to business men; and it is never resorted to except as a kind of forlorn-hope, and then its results are extremely unsatisfactory. Often the creditor collects nothing, and has the costs and his attorney's fee to pay; and if the debtor's property is not con-

sumed in costs, the creditor's share is always reduced by the amount of his lawyer's fee. Sometimes the claim is taken for collection on what is called a "contingent fee," which—as defined by a learned brother—means, if the lawyer fails to collect the debt he gets nothing, and if he succeds in collecting it the creditor gets nothing.

There is no sufficient consideration for depriving a debtor of the means of support. If depriving a debtor of all his property would liquidate all his debts, there could be some show of reason for demanding the sacrifice. But that result is rarely—I might indeed say never—attained. The practical results of collecting debts through the medium of the law are enough to condemn the whole system.

PROPERTY SOLD UNDER THE HAMMER.

It is a known fact that property sold under the hammer by constables, sheriffs, and marshals to pay debts, does not fetch more than one-half, or two-thirds of its value. The difference between the value of the property and what it sells for, is so much lost to the debtor. But this is only a part of the loss and waste attending the collection of a debt by law. In the case of small debts, which are the most numerous, and the attempted collection of which by execution usually brings the greatest distress upon the debtor, the costs and fees of the officers of the court often equal the debt itself, and not unfrequently exceed it.

The most prosperous and solvent business man in the community would be speedily brought to a state of insolvency if his indebtedness was doubled, without any consideration or benefit accruing to himself, and he was required to pay this augmented indebtedness in property at one-half of its value.

If such a man could not pay his debts by the process of the law, how can we expect it to be done by one laboring under temporary embarrassment, or one whose resources,

prudently managed, are barely adequate to that end, or one who has to supplement his existing resources by future gains?

But the hardship is not alone on the debtor. Creditors themselves are injured. One unable to meet his pecuniary obligations is always debtor to more than one man. In the race of diligence between the creditors, when a debtor is to be sacrificed on the altar of the law, the creditor obtaining the first mortgage, attachment or execution on the property of the debtor acquires the right to appropriate the proceeds of the property, to the exclusion of all other creditors. The result is that the debtor's property is sacrificed to pay—in so far as it may—a single creditor, leaving the other creditors without anything, and the debtor utterly destitute of the means of making the money to pay them.

A flood of attachments follows a failure of crops, as though men's honesty, like the crops, was injuriously affected by drouth, flood and frost. The existing law declares the preference given to the creditor, who first attaches and sacrifices the debtor's property, is a merited reward for his diligence. That word diligence has a flavor of virtue about it that is sometimes misleading. Whether diligence is a virtue or not, depends upon the character of the business in which it is exercised. Diligence in good works is a virtue to be encouraged, but diligence in bad works is a vice to be suppressed.

The preference given the first attaching creditor, instead of being a reward for merited diligence, is, in most cases, a premium for reckless swearing and rapacity. The creditor who is willing to swear blindly or falsely to an affidavit for an attachment, or procures an agent or attorney to do so for him, and does not scruple at breaking up his debtor, is preferred to the creditor who is too conscientious to swear blindly or falsely, and too fair and just to put in operation a process which, while it might result in a speedy payment of his own debt, would ruin the debtor, and preclude his other creditors from ever obtaining payment.

The sole motive of the first attaching creditor, in many cases, against embarrassed merchants, is the reward offered by law, for the first doubtful oath and the first selfish disregard of the rights of others. It is a maxim that "equality is equity," and that ought to be the rule when the law undertakes, by the process of attachment, to apply the property of a debtor to the payment of his debts.

It is susceptible of the clearest proof that the majority of debtors who have been rendered hopelessly insolvent by this race of diligence would have paid every debt they owed if all their property had not been taken from them and sacrificed at judicial sale. It is a discomforting thought, too, in this connection, that it is the harshest and most exacting creditor who usually obtains the preference. Enlightened creditors have learned by experience that their interests will be promoted by laws securing their debtors in the possession of the instrumentalities which will enable them in time to pay all their debts.

A LIBERAL EXEMPTION LAW

Is, in truth, the best collection law that can be devised.

What would be thought of a farmer who, in his eagerness to gather his crop of apples, should cut down the trees that bore them? Or, what would be thought of the husbandry of the man who, for the sake of enjoying a single day of riotous living, should devour the seed corn from which alone his future harvest of crops could spring? Yet, this is precisely what the law does with the debtor. It is not satisfied with the fruits of the soil in their season and the produce of labor by the industrious use of reasonable instrumentalities, but, in its eagerness to satisfy the demands of the exacting creditor, the source of all future revenue to the debtor is cut off, by depriving him of the land and the means to cultivate it, or of his other sources of gain if he be not a farmer.

The fable of the man who was not content to await the course of nature, but killed the goose that was laying him

golden eggs, in the expectation of enjoying her potential value at once, is practically an actual fact under the operation of the laws of this State. It is the potentiality of a debtor and not the pittance of property in sight that, in the great majority of cases, constitutes his chief capital.

The assertion that liberal exemption laws promote the interests of the creditors, as well as the debtors, does not rest on speculative reasoning. Authentic statistics show that the sum of uncollectable debts, and the number of insolvents, are diminished in proportion as the rigor of collection laws is relaxed, and liberal exemptions allowed debtors.

It is a mistaken notion, that men will not pay debts unless coerced to do so by law. All honest men—and the great majority of men are honest—will pay, if they can. Upon such men the operation of harsh collection laws is extremely injurious; not only in the direction I have pointed out, but they have a pernicious effect upon the morals of the debtor. Every freeman instinctively resents coercion, whether applied by law or any other agency. And many honest men feel that there is no longer any moral obligation resting upon them to pay a creditor who has sued them, when they were unable or not prepared to pay, and thereby added costs to their already heavy burden.

Legal coercion, of an honest debtor, does not increase his stock of honesty or add to his moral sense of obligation to pay, but diminishes both.

The most deserved lessons of adversity are not always salutary. Sometimes they soften and amend, but more frequently they harden and pervert. No man was ever made honest by statute, but many honest men have had a great strain put upon their honesty by bad laws. Few, if any, debts are lost when the debtor has an honest desire to pay, and is secured in the use of reasonable facilities. Such a spirit is more effectual to secure the payment of debts than all the collection laws that can be devised. A law which quenches this spirit, putting everything on the basis of legal obligation and legal coercion,

and sets debtor and creditor in antagonism, is a calamity to both, and to public morals as well. The more faith we put in humanity, and the less on the law of force, the more debts will be paid.

It is said these laws are designed to operate upon the dishonest debtors, who will not pay without coercion. But in practice their operation is exactly the reverse. Against the rascal who deliberately makes up his mind not to pay his debts, collection laws are of no avail; he easily eludes their grasp.

It is the honest man, who expects to pay his debts and conceals nothing, who is successfully attacked and ruined by mortgages, attachments and executions.

Let us stop punishing honest men and their families in the vain hope that we may some time catch a rogue. The true policy is to let the family of every man possess, in peace and security, ample exemptions, and punish criminally the man who, by fraudulent means, or for fraudulent purposes, obtains the money or property of another.

A QUESTION OF GRAVE IMPORTANCE.

This is a question in which the State and society have a deep concern, quite independent of the mere personal interests of the debtor and creditor. The State wants no paupers within her borders to be supported at public expense, and it should not permit one class of citizens to reduce another class to that condition. Men deprived of all means of making a living sometimes abandon hope and become helpless paupers, and sometimes grow desperate and become dangerous criminals. Accident or misfortune may reduce a man to this condition, but one citizen should not have the legal right to convert another citizen into a pauper or criminal.

The strongest law of man's nature is the primal law of self-preservation. Hunger is craving, imperious and irresistible, and must be satisfied or end in a tragedy. Nothing renders a man so desperate as real hunger; and nothing renders him so

dangerous to social order as the knowledge that his hunger is the result of unjust or oppressive laws.

To justify the preference shown by the law for the creditor over the debtor, it is assumed that all credit is given on the petition of the debtor, for his sole accommodation and benefit. Money-lenders who advertise for borrowers, and loan them money at usurious rates, and tradesmen who insist on selling their wares on credit at prices that yield them from 25 to 300 per cent. profit, masquerade before the public as natural born eleemosynary corporations, engaged in dispensing bounties with liberal hand to poor debtors. They speak of their transactions with their debtors as being, on their part, unselfish and disinterested acts of benevolence.

The pretense is glaringly false. The money lender is one who prefers to cast on others the hazards incident to the investment of capital in industrial, productive and commercial pursuits. He, therefore, anxiously seeks to loan his money at a high rate of interest, and thus absorbs the profits, and not unfrequently the capital, of the industrial or commercial pursuit in which it is invested by the borrower, without himself incurring any of the risks which are inseparable from such pursuits.

Having taken the precaution to exact security, good in every contingency, he is in a position to mock at the floods, defy drouths and untimely frosts, look with composure upon fluctuations of the market, and sleep soundly in the midst of a conflagration that reduces to ashes thousands of dollars of capital invested in industrial or commercial pursuits, and brings woe and want to hundreds. The merchant is more anxious to sell his wares to a good customer on credit than the customer is to buy. The landlord needs tenants as much as the tenants need land. The benefits, therefore, resulting from the relation of debtor and creditor are, or should be, reciprocal; and where they are not, it will be found, as a rule, to be the result of an unconscionable advantage taken of the debtor by the creditor.

The foundation on which the respect for contracts rests is

the conviction that they have been fairly entered into and that they are advantageous to both parties.

The remedy for the evils mentioned is to be found in an enlightened and liberal

EXEMPTION LAW THAT EXEMPTS.

There is a popular belief that we now have such laws in this State, but it is a popular delusion. Practically we have no exemptions at all. There is no inhibition against encumbering the homestead and personal property exemptions.

In this respect the law of this State falls below the standard of any state or territory in the United States pretending to have a homestead law. Some states prohibit incumbrances on the homestead absolutely, except for the purchase money, and in others, incumbrances are prohibited unless the wife executes the instrument creating the lien. (See Note.) This is the only State where the husband can mortgage the homestead without the knowledge or consent of the wife. The present law in this State is the result of narrow and contracted views, and rests on a total misconception of the principle on which homestead laws are founded.

The homestead is not exempted to the debtor for any merit of his own. It is given to the FAMILY for its protection, and for the protection of the state and society. Every home, however humble, safely secured to the family, is a block of granite added to the foundations of the Republic.

The patriotism, courage and virtue to preserve the Republic must come from the homes of the tranquil masses. The accidental head of the family should not, therefore, be allowed to mortgage the family homestead, any more than he should be allowed to mortgage the liberty or virtue of his wife and children.

The family and society ought not to be made to suffer vicariously for the inconsiderate or rash act of an improvident, unfortunate or dishonest husband. It is the families of pre-

cisely this kind of husbands that stand most in need of a homestead law. The family of the rich man does not need its protection; but the man who is opulent today may be a bankrupt tomorrow. It is the unexpected that always happens.

The Constitution of 1868, of this State, declared: "Hereafter the homestead of any resident of this State, who is a married man or head of a family, shall not be incumbered in any manner while owned by him, except for taxes, laborers' and mechanics' liens and securities for the purchase money thereof."

Very unwisely this provision was omitted from our present Constitution.

Any exemption law that does not contain such a provision is delusive. As long as creditors may exact bills of sale, mortgages and deeds of trust on all a debtor has, as well as on all the crops he may thereafter raise to the end of life, the mere exemption of the property from sale on execution is of no utility. Indeed, a law prohibiting incumbrances by bill of sale, mortgage or deed of trust of the exempted property, and permitting it to be taken on execution of a judgment, obtained by due course of law, would be preferable to our existing law.

If the property could not be seized and no lien could be fastened upon it until the debt was contracted and due, and judgment obtained and execution issued, the debtor up to that time would have the free use of the property and the power to sell so much of it as might be necessary to any one willing to purchase for its value, and with the proceeds satisfy the pressing debt.

It is said mortgages are taken because the debtor's property is exempt from seizure on execution. If a debtor and his family are to be stripped of all property, it makes no difference to him, or his family, or society, whether the process be a mortgage or an execution. There is no difference in the cruel and distressing results.

The obvious and only effective remedy against this savage disregard of the commonest principles of humanity, is to prohibit incumbrances on the exempted property, and thus prevent the creditor, either by mortgage or execution, from stripping the debtor and his family of every means of support.

As a result of these defective and bad laws, the State is afflicted with a type of money lenders, traders, and methods of doing business, the like of which was never seen before.

Two kinds of mortgages have become common.

MORTGAGES FOR BORROWED MONEY.

The first are mortgages upon lands, always including the homestead, for borrowed money.

Foreign corporations engaged in the business of loaning money, and, natural persons as well, having heard how the mortgage business flourished in Arkansas, came down to spy out the land. The first thing they did was to ask the legislature to pass an act declaring that in the case of mortgages and deeds of trust given for borrowed money, the borrower might waive the right of appraisement, sale and redemption. The legislature promptly complied with this request; and those corporations immediately engaged in the business of loaning money, on the following liberal (?) terms:

1. The borrower is required to pay 20 per cent. of the principal sum loaned as commissions for procuring the loan.

That sum, being exactly one-fifth of the money borrowed, he never sees or touches.

2. He is required to pay for a search of the records and an abstract of title.

3. He is required to keep the improvements on the lands insured, for the benefit of the mortgagee, against loss by fire, and pay the premium.

4. He is required to waive his right of appraisement, sale and redemption.

5. He is required to agree that the property may be sold by a trustee, upon short notice, without going into court.

6. He is required to pay the fees of the trustee, and the fees of the mortgagee's lawyer for collecting the mortgage.

7. He is required to pay interest annually on the principal sum, the fifth taken out for commissions, and which he never had the satisfaction of even handling, being counted as part of the principal.

The nominal rate of interest is 8 per cent. But the mention of 8 per cent. is deluding and deceptive. The mortgage specifies so many contingencies on the happening of any one of which—and some of which are certain to happen—the debt is to draw 10 per cent., that, practically, the result is the same as if the stipulation had been for 10 per cent. in the beginning.

8. By the terms of the mortgages taken by one of these corporations the mortgagor is required to ship all the cotton grown on the mortgaged lands by himself, his "heirs, employes and assignees," so long as any portion of the mortgage debt remains unpaid, to a firm of cotton factors in New Orleans, "to be by them sold on arrival at their option." This requirement secures to the lender, in addition to the commissions and interest on the loan, the commissions and profits of a cotton factor, on all the borrower's cotton, for the time the loan has to run, which is usually five years. The commissions and charges exacted as a cotton factor, are on a par with those charged on the loan. The loss to the borrower between shipping his cotton to these cotton factors for sale, and selling it himself, for spot cash, to the cotton buyers now found in all the towns in the cotton belt of the State, ranges from $2.50 to $5 per bale.

9. Finally, it is stipulated by the same corporation that the mortgage debt, both principal and interest, shall be paid "in United States gold coin of the present standard of weight and fineness."

Of the legal aspects of these mortgages I forbear to speak, and have now no opinion, because some of the mortgages are before the courts for adjudication. Observe the special favor shown lending corporations and capitalists by this act—it is only in their favor that all the protecting shields of the debtor can be waived—he cannot waive them in favor of the merchant from whom he gets his bread, or the doctor, or surgeon, who saves his life; no, not even in favor of the lawyer who may have saved him from the gallows.

The political economists who brought this state of things about, said they wanted "to invite capital into the State."

Whether borrowed money brought into the State adds to the capital of the borrower and enriches the state, depends upon the question whether the borrower can make more profit out of its use than he pays for it. There is no legitimate business in Arkansas that pays 15 or 20 per cent. profit on the capital invested, and least of all do farmers and planters make any such profit; but that is the profit they are required to make to pay the commissions, interest and expenses on these loans.

The practical result is, that after exhausting their energies and resources to pay the interest, their homes are finally sold under a deed of trust, without valuation or redemption. Usually there is no competition at such sales, and the mortgagee bids in the land at a nominal sum, compared to its real value, leaving a large portion of the mortgage debt still pending over the debtor. And the end of "inviting capital" into the State on such terms, is that it exhausts and withdraws from the State all the earnings of the borrower, and puts them in the coffers of these foreign corporations.

They do more. Love of home is one of the strongest affections of the human heart, and the law should protect the wife and children in the enjoyment of home, with the same jealous care that it guards their virtue and their morals.

But by special favor of the legislature, these foreign loan corporations are permitted to sell, by one of their own agents,

the homes of our citizens, who have been improvident enough to sign one of these mortgages, and drive out their wives and children from the family altars.

Desolation and sorrow follow in the wake of foreign capital, that takes the shape of mortgages on homesteads, drawing a rate of interest in excess of any possible profit that can be made out of its use.

The capital that makes a prosperous commonwealth, is the capital—whether it be money or muscle—that comes to stay, and is permanently invested in some industrial or productive pursuit, such as opening and cultivating farms, building houses, mills, factories, or railroads.

Under the operation of these deeds of trust the ownership of our homes does not pass from one citizen to another, but to non-residents, and foreign corporations, under whose proprietorship they soon take on that aspect of neglect and decay that usually marks the absentee's estate.*

Corporations formed for business purposes are common. They are useful and necessary agencies for many purposes. They furnish a convenient method of aggregating and managing capital in business pursuits, like banking and insurance, and in all enterprises requiring a larger expenditure of money than individual capital can supply, such as building railroads and the like.

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*The record in the case of Brewster vs. Holmes, in the circuit court of the United States for the eastern district of Arkansas, shows these facts: That, on the 25th day of April, 1883, Holmes executed his note to "The New England Mortgage Security Co." for $6000, for which he received $4800, twenty per cent. of the $6000, amounting to $1200, having been taken out as "commission." His notes were secured by a deed of trust on his homestead and plantation, containing 844 acres, certified to be worth, in cash, $15,000. Failing to pay the annual interest, the trustee advertised and, on the 29th day of September, 1884, sold the lands for $1000.

The deed of trust waived valuation and redemption, and the sale was absolute.

In a carefully prepared paper, published in the Helena Patriot, Judge M. L. Stephenson makes this startling statement: "Two thirds of the open lands, bordering the Mississippi, have long ago passed into the hands of foreign money lenders and commission merchants."

A considerable portion of the remaining third is owned by resident merchants, lawyers and speculators, who purchased at foreclosure sales, but who do not reside on the lands.

The effects of the absenteeism, growing out of this state of things, are thus depicted by Judge Stephenson: "Not the least disastrons of the results of this system is the fact that, as these estates pass into the hands of non-resident holders they cease to be the residence of any other white person than the 'superintendent,' usually a young man without family, working on a salary. Neighborhoods of white people are thus depleted and society broken up. Churches are abandoned or continued only by great effort and expense. Schools become a matter of impossibility."

Judge Stephenson limits this distressing condition of things, to the degree stated, to the open lands bordering on the Mississippi river.

It prevails less extensively elsewhere, and, fortunately, there are some localities, in this State, where this mortgage system is not practiced, in its integrity, to any considerable extent, if at all.

But why should money lenders organize themselves into a corporation for the purpose of lending money? The terms upon which these corporations do business have been outlined. It is obvious that the conscience of a natural person, adopting such methods, would be subjected to a heavy strain, and that he would incur some moral hazard.

It is to avoid these unpleasant consequences, probably, that money lenders resort to this artificial creation. It is a kind of scape-goat, which, while yielding them the fruits of its operations, secures them immunity from moral accountability for its methods.

A corporation, created for the sole purpose of lending money, is nothing but a concentrated and intensified usurer and miser. The man who lends his money and deals honestly with his customers, and resorts to no fraudulent or sham devices to evade the usury law, is a respectable and useful citizen; the miser even has a soul, shriveled and diminutive though it be, which may sometimes be filled with generous emotions; but this artificial and magnified money lender has no soul, no religion, and no God, but mammon. By the law of its creation it is legally incapable of doing anything but lend money for profit; every other function is denied it by law; the song of joy, and the cry of distress, are alike unheeded by it; it neither loves, hates nor pities; its chief virtue is the absence of all emotion which imparts uniformity and regularity to its business methods; it is argus-eyed and acute of hearing, or blind and deaf, accordingly as the one or the other of these conditions will best subserve its interests. Though a legal unit, it is infected with all the mean and plausible vices of those who act only in bodies, where the fear of punishment and sense of shame are diminished by partition; it never toils, but its money works for it, by that invisible, sleepless, consuming and relentless thing called interest. It never dies; and, unlike the man who lends money, has no heirs to scatter its gains; and in the eager and remorseless pursuit of the object of its creation, it turns mothers and children out of their homes with the same

cold, calm satisfaction, that it receives payment of a loan, in "gold coin of the present standard of weight and fineness."

These corporations have agents in the State whose offices are embellished with a flaring placard reading, "Money to Loan." Over the door of every such office ought to be inscribed in characters so large, that none could fail to read, the startling inscription that Dante saw over the gates of hell:

"All hope abandon, ye who enter here."

I now come to the consideration of the second kind of mortgages, fostered by the existing laws.

They are mortgages taken upon every particle of property of the mortgagor before the debt is contracted. Mortgages of this class are innocently denominated "mortgages for advances."

The favorite home of such mortgages is the alluvial cotton regions of the State, and their victims, as a general rule, are the tenants, though they not unfrequently reach out and gather the landlord himself in their fatal folds.

The effect of such mortgages, according to the practice and usage in this State, in extent of oppression, inhumanity and injury to the common weal, is shocking to every reasonable man's sense of justice. These mortgages are without parallel in the creations of men; their only likeness is found in an object of animal nature—which naturalists have named anaconda, and which is thus described: "A large serpent; it crushes its prey in its strong folds, lubricates it with saliva, seizes it with its teeth, and then swallows it whole very slowly, head first, which it is enabled to do by reason of its enormously dilated jaws and gullet. The largest and strongest animal once within its folds never escapes."

The parallel is complete. "Mortgages for advances" is a misnomer; their proper name is

ANACONDA MORTGAGES.

That the term bestowed on these mortgages is not an exaggerated one, but deserved, is capable of demonstration.

The tenant who has not the ready money to purchase supplies to enable him to pitch and grow his crop, must apply to the trader for credit. The trader avows his willingness to furnish the supplies; but says to the tenant. "As you have the right to mortgage your property and crops, and may become dissatisfied with my goods and prices, and seek to obtain credit elsewhere and give a mortgage to some one else, you must give me a mortgage before any supplies can be furnished."

The mortgage on the crops to be grown is not confined to the crop grown during the year for which the supplies are furnished, but it may extend to all crops the mortgagor can raise during his natural life. In answer to an inquiry on this head, a gentleman, familiar with the practice, writes me that these anaconda mortgages "usually cover the crop of one year, though there are a good many that cover the crops for two or three years, and I have seen some that extended over the crops of five years, and one without other limit than the payment of the debt."* And by Section 4749 of Mansfield's Digest this can lawfully be done.

Job was asked: "Hath the rain a father, and who hath begotten the drops of dew—the hoary frost of heaven, the treasures of the snow, the fruitfulness of the earth—who hath gendered them?" If the question was now asked, who hath a *mortgage* on these God-given blessings, the answer must be: The children of Israel and Christians in about equal proportions.

All over the rich cotton lands of this State the dews of heaven, the April showers, the summer rains, the snow with its fertilizing treasures, and the frosts that loosen the ground, are impiously mortgaged before they touch the earth; aye, for months and years before they are generated in God's heavenly laboratory.

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*A correspondent of the Gazette writing from Prescott, under date of January 30, 1886, says there is a mortgage, on the records of Nevada county, executed on the 17th of March, 1885, for $1000, due in 1895, "upon all the crops of the said A. H. Waddle for the years 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893 and 1894, also one speckled cow and her calf, two sows and pigs, one wagon, one top buggy, shafts and tongue."
It will be observed that this mortgage covers the crops of ten successive years.

The fruits of the earth while yet in her womb are laid under tribute; and how and for what?

The instant one of these anaconda mortgages is executed the maker becomes practically the slave of the mortgagee. He is deprived of all means of obtaining credit elsewhere. He is compelled to trade with the holder of the mortgage. He cannot object to the quality of the goods offered to him, nor to the prices charged. If he wants a pair of number eight shoes, and the trader has an unsalable pair of number ten boots, he must take the latter; if he wants a bushel of corn meal, and the trader has a barrel of sour flour, he must take this at a price double that of a sound barrel. If the season is favorable, and the industry of the tenant is likely to be rewarded with a bountiful crop, worse and worse commodities, at higher and higher prices, are forced upon him, until the limit of the value of his crop is reached. The hard-working and fortunate tenants are in this way forced to pay the debts of the idle, the vicious and the unfortunate; and at the end of crop-gathering time, there is no difference in the financial condition of the two classes.

I presided at a trial where it became necessary to inquire into the actual capital invested in a sheaf of these mortgages, and it was shown that the goods had been sold at from one hundred and fifty to three hundred per cent. profit.

I do not pretend that there are not instances where the mortgagor is guilty of voluntary extravagance, but such extravagance usually occurs with the landlords or planters, and is besides the result of the system I am assailing. The credit that these mortgages give their makers is itself a serious objection to them.

Such credit tempts very many, and sometimes the most prudent persons, to indulge in expenses beyond their means, and beyond what is necessary for their support.

If exempted property and crops to be grown could not be mortgaged, merchants would be compelled to exercise more

care, and extend credit more sparingly, and sell at more reasonable rates. Landlords and tenants would be constrained to practice economy in order to obtain credit, and being free to traffic where they chose, they could purchase the kind and quality of goods desired, and at reasonable prices.

We are told that one "shall not plant and another eat," but it was not given to the prophet Isaiah even to look down the vista of time for two thousand five hundred years and read the Arkansas statutes.

Under them every man who executes an anaconda mortgage is condemned to plant, and eat not. For them the heavens might as well be brass and the earth iron. Those that sow not, reap; and those that plant not, eat.

The landlord rents his land and toils not; the merchant sells his wares for his profit; while the cultivating tenant, whose labor produces the staple of this country, and upon the successful and extended production of which the prosperity of the State and her people depend, is obliged to pay, for rent on the land and for profit on his supplies, what will maintain both the landlord and the merchant, leaving him for support of himself and family less than the prodigal son enjoyed in his worst estate.

The inspired law giver of God's chosen people decreed that: "No man shall take the nether or the upper mill-stone to pledge, for he taketh a man's life to pledge;" but a man's life is more surely taken to pledge when the entire fruits of his labor, even to the very seed corn, are enveloped in the folds of an anaconda mortgage.

"You take my life when you do take the means whereby I live."

The mortgagee quadruples the price of his wares to compensate for the risk he incurs in extending credit. But mark you, he takes none of the risks incident to growing crops. He has a mortgage on all that makes crops, but shares no responsibility for that which destroys them. The losses by floods, by

drouth, by worms, and by untimely frosts, are all the tenant's. For these losses the mortgagee abates nothing of his accounts for supplies. Nor is this all. While the mortgagee charges the tenant enormously more than the market value of his wares, how is it with the tenant's commodities? When he comes to pay the mortgage debt in cotton or corn or other property, he is allowed no profit—he must turn it over at its market value in cash, though it may have cost him largely more than the market price to produce it.

The contest is, indeed, an unequal one.

Dealers should not be permitted to exact a mortgage for their goods before they are sold, and after getting the mortgage, and by this means depriving the mortgagor of the credit and ability to procure his supplies elsewhere, extort from him unconscionable prices for their wares.

It is competent for the legislature to declare every such mortgage given, not for an existing debt, but for supplies to be thereafter furnished, extortionate and void, where the average price, charged by the mortgagee for the supplies furnished, exceeds a liberal profit, to be named, over the wholesale cost, in cash, of such supplies at the place where they are retailed.

The merchant cannot be compelled to sell his goods at any price; but the whole subject of mortgages is within legislative control, and this class of mortgages may be prohibited altogether, or permitted on such conditions as are deemed reasonable, and declared void when such conditions are violated. The law does not compel the money lender to lend his money for ten per cent. interest, but if he lends it at a higher rate the law declares the contract void. And so the merchant cannot be required to take one of these mortgages, but the law may provide that if he does take it, it shall be void if he charges for the goods supplied under it more than a specified per cent. profit.

The method of foreclosing these mortgages is summary, arbitrary and tyrannical. There is no judicial ascertainment of

the amount of the debt, but the mortgagee may seize and sell the property for any price he pleases, to pay any sum he asserts to be due him.

If these instruments are suffered to survive some limitation must be placed on their present boundless powers of oppression and extortion.

But it is said crops cannot be raised at all unless they are mortgaged before they are planted. That it is the prospective crop that gives the tenant credit for his food while he raises it.

But as soon as the crop is gathered the tenant is where he began—he is without food or credit, and that, too, in the winter season, when it is difficult to find employment.

If the process of starving must be gone through with by the tenant, he had as well enter upon it in the spring as in the fall.

Better in the spring than in the fall, because if he does not till the land as a tenant, he must be paid wages to till it for the landlord, and his wages will buy more, and profit him more, than any crop his labor would produce, wrapped in the coils of an anaconda.

It costs infinitely more to cheat one's neighbor to his face than behind his back. It twinges the conscience less, and besides it is much safer, to cheat him in his absence than in his presence.

Recognizing this truth, the statute provides a method by which the holder of one of these anaconda mortgages can perpetuate it until doomsday, for just such sum as the elasticity of his conscience can be made to cover, without consulting with, and indeed against the protest of, the mortgagor.

It provides that if the mortgagee, his agent or attorney, will file an affidavit in the recorder's office once a year, stating what is due on the mortgage, such affidavit shall have the effect to perpetuate the lien for the sum sworn to, and "shall be received in evidence" in all suits and proceedings relating to the mortgage.

The mortgagor is not consulted.

In addition to the advantages already mentioned, this plan has the merit of saving time and trouble. It is obvious a man can make a settlement, which brings his neighbor out in debt to him, much quicker and easier by himself than if his neighbor was present and had to be consulted.

Of course, when such an affidavit is filed, the mortgagor can get no credit elsewhere. It is said that if he does not owe the amount specified in the affidavit, he can file a bill in chancery and correct it. Yes, if he had money to hire a lawyer he could. But it takes, on an average, two years to dispose of a chancery suit, and what is to become of the mortgagor in the meantime, left, as he is, without property or credit?

A SAMPLE CASE UNDER THE ACT.

As originally enacted this law made it a felony, punishable by imprisonment at hard labor in the penitentiary, for not less than one nor more than two years, for the mortgagor to remove beyond the limits of the county, or sell, barter or exchange or otherwise dispose of any part of the mortgaged property. Samuel N. Beard executed an anaconda mortgage on his stock and crop to be grown. He drew $43 worth of supplies at the usual prices in such cases. His crop and stock were worth more than that amount. His wife languished on a bed of sickness during the summer, and at last was too weak to digest any longer the strong and coarse food on which her husband fed, and her doctor ordered beef tea. The door of the cabin in which he lived had no shutter. The chill November winds were sweeping through it, imperiling his wife's life. In this extremity he bartered seventy pounds of his cotton for lean beef to make soup for his wife and for a shutter to the door of his cabin. For this Beard was indicted, tried and convicted, and sent to the penitentiary for one year. He offered to show that the property covered by the mortgage exceeded in value the mortgage debt, and that he could have had no intention to defraud; but the court said that the statute said nothing about

the intention with which the act was done, and that it was also immaterial whether the remaining property was worth more or less than the mortgage debt, that the offense, by the words of the act, was complete by the simple act of selling or trading any part of the mortgaged property, without regard to motive, or any other facts. And the supreme court of the State affirmed the judgment. Beard vs. State, 43 Ark., 284. But the judges of that court were so shocked at the inhumanity of the law that they urged upon the legislature its repeal or modification, and under the pressure of that recommendation it was modified; but in the meantime Beard was sent to the penitentiary. Upon the facts coming to the knowledge of the governor, Beard was pardoned.

No law of similar atrocity can be found in modern statutes; but a writer of fiction, gifted with vivid imagination, presents us with a case on all-fours with that of poor Beard. The heir apparent to the throne of Japan (so the fiction runs) ran away from home, changed his name, disguised himself as a trombone, committed a capital offense, was sentenced to death and supposed to be executed. The officers of the law who condemned and executed him knew nothing of his true name and birth; but they were arraigned before the Mikado for compassing the death of the heir apparent. This was their plea: "If your majesty will accept our assurance, we had no idea, no notion, no thought he was the heir apparent."

Mikado: "Of course you hadn't. That is the pathetic part of it. Unfortunately the fool of an act, says: 'Compassing the death of the heir apparent.' There is not a word about a mistake, or not knowing, or having no notion. There should be, of course, but there isn't. That's the slovenly way in which these acts are drawn. However, cheer up, it will be all right, I'll have it altered next session." "What is the good of that?" exclaimed the accused, who were in the meantime to be boiled in oil.

Obviously, if Gilbert and Sullivan had known of the case of State vs. Beard, they would have had no occasion to rack their

brains for an ideal "fool of an act" or saddle its cruel consequences upon an unoffending foreign country.

CONDITION OF ARKANSAS AND IRISH TENANTRY COMPARED.

Not long since there was held in this city a public meeting to express sympathy for the Irish tenantry, and raise funds to aid them in their struggle to improve their condition.

Let us contrast their condition with the condition of the tenantry of this State.

In the report to parliament of the royal commission appointed to inquire into the cause of the decline of agriculture in Ireland, they say that in Connaught there is a system called the "goombeen," which presses with great severity on the unfortunate tenants. They give the following sample case as illustrative of that system:

One man "had some five hundred I. O. U.'s for £1 19s 11d each, that sum being fixed upon to enable him to obtain decrees from the petty sessions in the town. Basing their calculations on his own statement, the rate of interest he charged was 43 1-2 per cent. per annum. He kept a whisky and grocery shop (a whisky shop is not an uncommon adjunct to our supply stores), in which the people were induced, by his gentle pressure, to buy at his own prices."

The commissioners say of the districts where this system is in vogue: "The land is wretchedly farmed."

What is 43 1 2 per cent. compared to the profits charged by the holders of anaconda mortgages on tenants in Arkansas? The latter would scorn 43 1-2 per cent.

The "goombeen" of Connaught is, undoubtedly, oppressive, but the anaconda mortgage of Arkansas exceeds it by more than three to one. We grow eloquent over the oppressions of the Irish tenantry, but we view with complacency a worse condition of things at our own door. We are always more ready to give advice than to receive it; and it is a much

pleasanter task to pluck the mote from our neighbor's eye than to take the beam out of our own.

The "goombeen" has borne its fruits in Ireland, and the anaconda mortgage will bear its fruits in Arkansas.

It is a grave mistake to suppose you can permanently benefit one class in a community by permanently impoverishing the other. Whatever tends to oppress and debase one class, will, in the end, prove disastrous to all classes.

Death attacks the extremities first, but after they perish the body does not long survive.

I close the discussion in the words of Mr. Burke: "I know that credit must be preserved, but equity must be preserved too; and it is impossible that anything should be necessary to commerce which is inconsistent with justice."

The remedy for these evils is obvious and easy of application.

1. Prohibit incumbrances of the homestead and personal property exemptions. This the legislature can do without an amendment to the Constitution.

2. Repeal the act authorizing mortgages on crops growing and to be grown; or, at least, modify it, by providing that such a mortgage shall only be operative on so much of the crop as may remain after paying rent and taking out enough to feed the mortgagor and his family for one year, and seed for the next year's crop; and declare mortgages for advances void for extortion, where the prices charged exceed a liberal profit, to be named.

3. Prohibit preferences in assignments for the payment of debts, and prohibit preferences by attachment, by providing that the first attachment shall inure to the equal benefit of all creditors who will come in and share the court expenses.

4. Repeal the act authorizing money lenders to exact of borrowers a waiver of valuation and redemption of the lands mortgaged to secure the loan.

Some of these measures of reform have been adopted in many states, with the happiest results. They are the result of broad and just views of public policy, and their adoption cannot long be delayed.

"Yet I doubt not through the ages one increasing purpose runs,
"And the thoughts of men are widened with the process of the suns."

NOTE.

The Constitution of Georgia, of 1868, declares:

"Each head of a family, or guardian or trustee of a family of minor children, shall be entitled to a homestead of realty to the value of $2000 in specie, and personal property to the value of $1000 in specie. . . . . And it shall be the duty of the General Assembly, as early as practicable, to provide by law, for the setting apart and valuation of said property, and to enact laws for the full and complete protection and security of the same to the sole use and benefits of said *families* as aforesaid." Art. 7, Sec. 1, Constitution of Georgia, 1868. The act passed in pursuance of this constitutional injunction "secures the homestead to the family," and prohibits a waiver of the personal property exemption "as to wearing apparel and $300 worth of household and kitchen furniture and provisions." Act Dec. 16, 1878.

The constitution of the State of Texas, of 1876, declares:

Article xvi., section 49: "The legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female."

Section 50: "The homestead of a family shall be, and is hereby, protected from forced sale for the payment of all debts, except for the purchase-money thereof, or a part of such purchase-money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife, given in the same manner as is required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without the consent of the wife, given in such manner as may be prescribed by law.

"No mortgage, trust-deed or other lien on the homestead shall ever be valid, except for the purchase-money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage or trust-deed, or other lien, shall have been created by the husband alone or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void."

Section 51: "The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots, not to exceed in value five thousand dollars at the time of their designation as the homestead, without reference to the value of any improvements thereon. *Provided,* That the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family. *Provided, also,* That any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired."

In compliance with the command of the constitution (section 49, article xvi.,) the legislature passed the following act on the subject of personal property exemption:

"The following property shall be reserved to every family, exempt from attachment or execution, and every other species of forced sale for the payment of debts, except as hereinafter provided:

"1. The homestead of the family.
"2. All household and kitchen furniture.
"3. Any lot or lots in a cemetery, held for the purpose of sepulture.
"4. All implements of husbandry.
"5. All tools, apparatus and books belonging to any trade or profession.
"6. The family library and all family portraits and pictures.
"7. Five milch cows and their calves.
"8. Two yoke of work oxen, with necessary yokes and chains.
"9. Two horses and one wagon.
"10. One carriage or buggy.
"11. One gun.
"12. Twenty hogs.
"13. Twenty head of sheep.
"14. All saddles, bridles and harness necessary for the use of the family.
"15. All provisions and forage on hand for home consumption, and
"16. All current wages for pe sonal services." *Rev. Stat. Texas, 1879, Art. 2335.*

For the purpose of obtaining accurate and reliable information as to the practical operation and effect of the exemption laws of Texas—by far the most liberal yet enacted—I addressed letters of inquiry to Hon. John Ireland, Governor of the State; to Mr. Todd, a lawyer living in Texas, who has had ample opportunity to observe their effects and large experience in the collection of debts in both States, and to Mr. Munzesheimer, an experienced and successful merchant in Texas, who has also done a large business in Arkansas. The following are the answers received to my inquiries:

LETTER OF GOVERNOR JOHN IRELAND.

EXECUTIVE OFFICE, AUSTIN, February 8, 1886.

Hon. H. C. Caldwell, Little Rock, Ark.:

DEAR SIR: I have your favor of the 3d, asking my views of our exemption laws, their effect upon the credit of Texas, and the comparative esteem in which such regulations are held now with those of an earlier date. As the questions involve principles of the highest moment to society, I at once reply.

The earliest provisions adopted by the people of Texas are to be found in "Hartley Digest" Texas laws, page 404. This act extended to certain classes, to-wit:

All officers and soldiers in the regular army of Texas, or in the navy for the time being. All public agents to foreign countries. All members and officers of the general council and of the provisional government while in attendance upon their official duties and all members of the volunteer army until they return to their homes. *Act Pro. Congress, 22 Jan., 1836.*

On the 26th of January, 1836, Congress passed the second act on this subject, and provided that there should be exempt and reserved to every head of a family of the Republic, free and independent of every writ of *fieri facias* or other execution issuing from any court of the Republic, fifty acres of land, or one town lot, including the homestead and improvements, not ex-

ceeding five hundred dollars in value; all household and kitchen furniture, not to exceed two hundred dollars in value; all implements of husbandry, not to exceed fifty dollars in value; all tools, apparatus and books belonging to trades or professions, five milch cows, one yoke of oxen or one horse, twenty hogs, and one year's provisions, saving the rights of creditors before its passage. *Hartley Digest, page 406*

At the adoption of the Constitution of 1845, under which Texas was annexed to the Union, it is provided that (sec. 22, art. 7,) "The legislature shall have power to protect by law from forced sale a certain portion of the property of the heads of families, the homestead not to exceed two hundred acres of land; if in town or city, town lot or lots not to exceed $2000 in value; for any debts thereafter contracted. Nor shall the owner, if a married man, allenate the same without the consent of the wife in such manner as the legislature might provide." *Hartley, page 73.*

In 1848 the legislature made ample provision for carrying into effect these constitutional provisions.

In the meantime the Supreme Court held that these provisions *proprio vigore* save this property to the intended beneficiaries.

The amended constitutions of 1861, 1866. 1868-9, all contained like provisions, and all legislatures under them continued to enlarge the exemptions.

The present constitution, adopted in 1876, provides that it shall be the duty of the legislature to protect from forced sale a certain portion of personal property of all heads of families, and *also of unmarried adult males and females.* Article 16, section 49. Section 50, same article, provides that the homestead of a family shall be and is *hereby* exempt from forced sale for payment of all debts except for purchase money, the taxes due thereon, or for work done thereon, or material used thereon. Cannot be alienated except by consent of the wife in the mode pointed out. All mortgages, simulated sales, etc., declared void. All deeds of trust void.

Under laws enacted by virtue of these provisions, exemptions now extend to $5000 *in value.* You will observe that at each successive step these ideas have been enlarged and improved.

It would be impossible for me to say what effect they have had on the credit of the State or our people, as the credit of both have been without limit and of highest character.

The small amount of debt of Texas outstanding is virtually withdrawn from market on account of the high premium asked for the bonds. We cannot purchase a bond for less than from 20 to 40 per cent. premium, governed by the length of time they have to run. The unlimited credit of our people has proven one of the greatest disasters to them that they have had to encounter. It is yet to be demonstrated to me that any law to enforce the payment of a debt has or ever can be of any benefit to our race. Far better, in my opinion, throw men upon their honor. I am a Kentuckian, and it is vividly pictured on my mind the scenes that I have with nessed in my boyhood, of constables and sheriffs taking the last old chair, the old feather bed, and the old skillet, the last of the household goods of old men and women, with squalid children hanging around these old heir looms.

I call your attention to some ideas advanced by one of our earliest judges on the homestead exemptions, to be found at *page 312, 8th Texas Supreme Court Reports.*

I have now written more than I intended, but you see I have only noted the subjects.

I am, very respectfully, your obedient servant,

JNO. IRELAND.

LETTER OF CHAS. S. TODD, ESQ.

TEXARKANA, TEXAS, Feb. 5, 1886.

Hon. H. C. Caldwell, Little Rock, Ark.:

DEAR SIR: Your favor of the 3d inst., requesting me to answer certain inquiries therein propounded, respecting the operation of our system of homestead exemptions, has been received, and it affords me pleasure to comply, so far as I am able, with your request. Your interrogatories are as follows, with answer to each:

1. "Have these liberal exemptions impaired or strengthened credit?"

To this I answer that, in my judgment, they have had a tendency to strengthen *legitimate commercial* credit, though perhaps to restrict promiscuous *individual* credit; from the fact that all commercial transactions are had in the light of, and with special regard to, these provisions; and while creditors are rendered cautious, they recognize the fact that, by these liberal exemptions, the debtor's ability to pay, and to accumulate assets not exempt, is greatly increased and enhanced. As an evidence of the correctness of this, one need only look at the great and constantly increasing importance of Texas as a field for commercial enterprise.

2. "Have they had the effect to lessen or increase the amount of uncollectible debts?"

The effect is to decidedly *lessen* the amount of *uncollectible* debts, a necessary sequence of the conditions stated in the answer to the first interrogatory above. If a man fails in Texas, a debt against him is not necessarily uncollectible; for he has a better chance to rise again than he would have without the exemption provisions. In my own experience in the collection business on the line between the States of Arkansas and Texas, having during the last five years received many claims for collection against parties in each of the two States, the *proportion* of uncollectible Arkansas claims coming into my hands is and has been greatly in excess of the uncollectible Texas claims.

3. "Do they, in the long run, injure or promote the interests of creditors?"

I can only give my opinion, that the interests of creditors are not prejudiced by the exemption laws, while the interests of the great mass of the people are greatly promoted and protected.

4. "Is the prohibition against incumbering the homestead esteemed an essential feature, and does it work well in practice?"

I regard the prohibition mentioned as one of the most highly esteemed, important and practically valuable features of our public policy. The people of Texas are entirely free from that great incubus which oppresses the inhabitants of the Western States, viz: "the mortgage on the farm." In this connection I enclose herewith a blank contract with which Arkansas is being flooded, with the view of placing the farmers of Arkansas under the heels of the eastern money-lenders. [The blank inclosed is one of the 20 per cent. commission contracts of an eastern loan corporation that is doing a flourishing business in Arkansas.] This business could not be carried on in Texas.

5. "Have the provisions referred to gained or lost in public esteem since they went into operation?"

If there is any one provision of the State constitution of which the people of Texas are more jealous than of any other, it is that which assures them of the protection of the home of their families. Every change enforced by public sentiment has been but to strengthen and enlarge the bulwarks around the home, so that the present is the most liberal on that subject of four constitutions which the people have framed. To these liberal homestead laws we attribute, in a large degree, the vast influx of immigration to our State, and the rapid and almost phenomenal increase in the population, wealth, prosperity and power of the great commonwealth of Texas.

I have endeavored to express my views as briefly as is consistent with clearness, though, of course, much more could be said upon the fruitful subject opened by your inquiries. If I shall have been able to contribute in any degree to the inauguration and establishment of a more liberal homestead system in our sister State of Arkansas, I shall feel gratified.

Thanking you for the courteous, not to say flattering, terms of your letter to me, and trusting the reply will meet your approbation, as it embodies my sincere and well matured convictions, I have the honor to be, sir, very truly and respectfully yours,

CHAS. S. TODD.

LETTER FROM MR. MAX MUNZESHEIMER, WHOLESALE GROCER.

TEXARKANA, TEXAS, Feb. 6, 1886.

Hon. Henry C. Caldwell, Little Rock, Ark.:

DEAR SIR: I am duly in receipt of your favor of the 5th inst., handed me by Mr. Charles S. Todd, making inquiries regarding the practical workings of our exemption laws, and, after due consideration, I beg to submit the following as my own opinions, based upon fifteen years' mercantile experience in the State of Texas:

To the first interrogatory. I have never pursued the practice of advancing on mortgages. Many merchants do so on crop and stock mortgages, exclusive of exemptions.

I should suppose the tendency is to strengthen and promote commercial credit, as a man's standing is based upon such property or effects, exclusive of all exemptions prescribed by our statute. Those who fail in business or farming have something left them from forced sale, which represents that much capital, sufficient to produce enough to enable them to rise again.

My business has extended both in Arkansas and Texas, and my experience is, that there is a far greater proportion of uncollectible debts on my books in Arkansas than in Texas; and, of the great number of judgments that I have obtained against parties in the courts of both States, I find that many created in Texas are collected in such proportions as those created in Arkansas are absolutely lost.

Attributing this ability to pay in Texas to the advantages of the exemption laws, I regard the law in this instance a good one, and the only objection that can be taken is that the law as it now stands in Texas does not clearly enough define the homestead, sufficient to avert controversy, which, in all cases, arises when the subject is brought before the courts.

I am, sir, with high esteem, yours most obediently,

MAX MUNZESHEIMER.

The testimony of these gentlemen is corroborated by the Federal census of 1880, which shows that from 1870 to 1880, the percentage of increase of dwellings in Texas, was 100 per cent., while in Arkansas it was only 69 per cent.; and during the same period the number of farms in Texas was trebled, while in Arkansas they were not doubled.

The Committee on Memorials, by its chairman, U. M. Rose, made the following report:

IN MEMORIAM.

Mr. President:

Death continues to levy his annual tribute on our Association, and to enforce it in his familiar and imperative manner. Our accustomed re-unions, cheered by pleasant greetings and enlivened by a renewal of social intercourse, too often and too long interrupted by the incessant duties of life, have never failed to remind us, by the late decease of some companion, of the inexorable destiny which extends its irresistible sway over all created things, and of the extremely ephemeral and precarious tenure by which we hold our lives and our most cherished possessions.

At our last meeting, Judge John R. Eakin was one of our most active and efficient members, participating in all our discussions and proceedings in a manner which lent to them an additional utility and interest, and which proved his devotion to the higher objects of our profession—the making of the practical administration of the law the realization of the highest and purest ideal of justice, as adapted to the relations of men and the business of life.

At that time there was nothing to awaken any apprehension that he would be the first to depart on that lonely voyage, upon which we must each, at no distant day, embark; for, though somewhat advanced in life, he was at that time apparently in full health and in the possession of his ordinary vigor. By that irony of fate, which at times visits its derision upon all the undertakings and hopes of men, he was appointed, at our last meeting, a member of the Committee on Memorials. Thus to him was delegated the duty of preserving the memory of any one of the body who might die during the year; and today we have to lament his loss alone, no other member of the Association having died since he was thus appointed.

Judge Eakin was born at Shelbyville, Tennessee, on the 14th day of February, 1822, and was admitted to the bar in Nashville, in 1844. He removed to Washington, in this State, in 1857, and continued to reside there until he was removed by death, on the 3d day of September last. In 1867 he was a member of the House of Representatives of this State; in 1874 he was an active and influential member of the convention that framed the present State Constitution. He was after that twice elected Chancellor of the Pulaski Chancery Court by the electors of the State at large; and in the same manner he was afterwards elected an Associate Justice of our Supreme Court, which position he held at the time of his death.

Without indulging in that vein of extravagant eulogy of the dead, which often prevails on occasions like the present, your committee feels amply justified in saying that Judge Eakin was a man of learning and ability; and in his latter years, more particularly, very much devoted to his profession, and to all of its better interests. As a man he was upright, and charitable and forgiving to an unusual degree. A kind father, an affectionate husband and a devoted friend, he had, as far as we know, no emnities, but recognizing our common liability to err and the all-efficient tortures of regret and self-reproach, his resentments were short-lived. His reading was varied and extensive, and his critical taste showed the results of assiduous and discriminating cultivation. As a legislator and as a judge he displayed energy and a spirit of research, rendered subservient to what he esteemed the permanent and paramount good of his fellow-men. Possessed of social qualities in a high degree his loss has been keenly felt, not only by the bar, but by an extensive acquaintance beyond its limits, and, in a less degree, by all reflecting people throughout the State, who may have had but little or no personal acquaintance with him. During his last years Judge Eakin had a very realizing sense of the uncertainty of life, which has been so impressively illustrated for us by his death, and having made preparations for the closing scene, he departed with the hope of resuming existence in a better world.

In view of these facts, which are familiar to all now present, your committee would recommend that, without any special formality, this report should be adopted as an appropriate, though necessarily an inadequate, estimate of the virtues of our deceased brother, and that on account of these virtues, it be

Resolved, That we sincerely deplore the loss sustained by ourselves, and by many others in differing degrees, by the death of Judge Eakin.

Resolved, That we respectfully tender to the surviving members of the family of the deceased our heartfelt sympathy in their bereavement. U. M. Rose, Chairman.

Which upon motion was adopted.

The committee appointed to select Vice-Presidents, made the following report by its Chairman, S. W. Williams:

VICE-PRESIDENTS.

1st	Judicial	Circuit	M. T. Sanders
2d	"	"	W. H. Cate
3d	"	"	L. Minor
4th	"	"	A. M. Wilson
5th	"	"	W. C. Ford
6th	"	"	C. S. Collins
7th	"	"	R. G. Davies
8th	"	"	J. H. Crawford
9th	"	"	J. M. Montgomery
10th	"	"	D. H. Reynolds
11th	"	"	W. S. McCain
12th	"	"	Jas. F. Read
13th	"	"	H. G. Bunn

Who were unanimously elected Vice-Presidents.

The Secretary made his annual report, which, upon motion, was referred to the Executive Committee.

The Secretary read a communication from P. O. Thweatt, expressing his regret at not being present to read the paper he had prepared.

Upon motion the paper of P. O. Thweatt was ordered to be printed with the proceedings.

OUR PROBATE COURT SYSTEM—ITS DEFECTS AND ABUSES.

Although one branch of this subject has been discussed by Brother Ben. F. DuVal, in an able paper read before this Association at our last meeting, yet there is more left to be said than I can say in this brief paper which I am about to submit. When we reflect that the property of the country changes ownership and is administered upon, once in about every thirty-four years, and all of us who are here present today will pass away in a few short years, and our estates, whether great or small, must pass through this process of administration by our Probate Court system, it strikes me that it is a duty we owe ourselves and our families, to examine this system carefully and discuss it thoroughly and see if it is the best that can be found, and if it cannot be improved upon. If I shall succeed in this short paper in inducing this Association to make this examination, and engage in such discussion, not alone here today in a desultory and perfunctory manner, but to carry this subject home with them and think of it seriously and calmly; if I shall do this, I say, my object will have been accomplished.

Then, in the first place, in speaking of the Probate Court system of Arkansas, I shall not go back to the original of the probate and administration system as given us by Blackstone and others, a part of the history of which is no doubt like the history of the origin of property, mixed up somewhat with romance, and is the offspring of his fertile imagination.

The first authentic history, or information perhaps, that we have in regard to the common law or custom on the subject is that of the reign of Henry II, when a man's goods were to be

divided into three equal parts, one of which went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or if he died without a wife he might dispose of one moiety, and the other went to his children, and so *e converso*, if he had no children the wife was entitled to one moiety, and he might bequeath the other; but if he died without either wife or children, (or issue,) the whole was at his disposal. The shares of the wife and children were called "their reasonable parts." Magna Charta afterwards provided "that the king's debts shall first be paid and the residue of the goods shall go to the executor to perform the will of the deceased." By subsequent acts of parliament, during the reigns of different monarchs, various changes were made both in the manner and in the tribunals in which the estates were administered, which changes I will not attempt to follow out, nor mention, until we find the common law, as imported into this country by our British ancestors, and which, with fewer material alterations and modifications by statute than we at first glance might suppose, is the law in this as well as most of the States of the Union, by and under which the estates of deceased persons are administered and settled. And we might here ask the question if these statutory changes and modifications of this branch of the common law have always been wise or beneficial? While not willing to believe with Blackstone that the common law is the perfection of reason, I am still less prepared to believe that there is perfection or reason either in many of the large mass of statutes with which the present generation is afflicted. One legislature is principally engaged in undoing what another has done, and the courts in endeavoring to determine and find out what the intention of the legislature was; not an easy undertaking by any means. And when the courts do construe the meaning of certain acts, another legislature convenes and straightway repeals, modifies or changes them, and in some instances assuming judicial functions, proceeds to make a solemn declaration of what a former legislature did intend by a certain act, which was more than the

legislature that passed it could do. See Acts of General Assembly, approved March 4, 1874, page 212.

But does this not more properly come under another head of my subject, viz: "Its Defects?" It has during the whole course of my practice occurred to me that one of the principal defects of the system grows out of the fact that we have an elective judiciary, and the fact that no legal knowledge or qualification is required of the Judge of the Probate Court. Why this is, I have not been able to see. Two Constitutions, framed by two different political parties, have existed in this State within less than twenty years, and yet the man who, of all others, should be "learned in the law," for it is he who has the superintendence and management of the estates of deceased persons, and the persons and estates of minor orphans who cannot help themselves nor look after their own interests; under neither of these Constitutions, I say, is this man required to have any qualifications, fitness or training for the office, and, as far as my experience goes, the exception is for him to possess either. He is generally elected by the dominant party of the county, because he is a "good, clever fellow," or as a reward for services rendered the party, and, as a matter of course, in nine cases out of ten, is utterly unfit for the position, and one with whom we would not trust our private affairs. Yet, under the Constitution, this court has the "exclusive original jurisdiction in matters of probate, administration," etc. I might suggest other defects in and objections to the system, but, not to be tedious, I will proceed to the next branch of the subject; "Its Abuses." And there is so much that could be said under this head that I scarcely know just where to begin. I find, too, that the abuses of the system are not confined to our State, nor the newer and less densely populated states, but they seem to be almost universal, at least so far as my knowledge and information extends. To the defects are owing in a great measure the abuses, and between the two it is the exception to find an estate that is not wrecked and squandered, and the larger the estate the more complete is the wreck and spoliation.

One way in which this is accomplished, if the property consists of a plantation with a growing crop, some creditor will have himself or some one for him appointed administrator, and get an order of court to carry on the business and wind up the crop, and more frequently he winds up the estate with the crop and leaves nothing. However, when there are creditors there is less opportunity for the administrator to squander an estate, because he has some parties in interest to look after his doings in the premises, but in the case of minors, where there is no one to watch the executor or guardian, except the clever, incompetent politician who has been elected judge, there is the favorite field for operations.

Several noted cases have come under my observation, and I presume there is not a lawyer here today who has not known of many of a similar nature. One case was that of an Irishman, who, on the Mississippi river, in the eastern part of the State, died prior to the civil war (or rebellion), leaving a handsome estate of the value of $60,000 to his illegitimate children by one of his slaves, and provided by his will that they be sent to a free State and educated. He appointed an executor, who gave bond, and proceeded to do everything except to carry out the behests of the will. One of the children was kept in slavery, and the other was sold into slavery to a party ignorant of the provisions of the will. Very soon litigation sprang up in regard to this property, which was carried to the Supreme Court, and was continued for a number of years at heavy expense to the estate. A large part of the property was sold and converted into money. The war came on and the matter lay in abeyance until the close, when the legatees commenced proceedings to obtain what was due them, and it was found that only about $24,000 was left for them, and out of this sum they never realized but a few hundred dollars, whilst the sureties on the bond of the executor appropriated almost the whole of it to their own use, and left the heir, and what is remarkably strange, the executors, without anything. Another notable case in the same county, was

that of John Anderson Craig, who left a large fortune, but out of which the attorneys for the administrator were paid over $7000 in fees by order of the Probate Court, whilst the creditors only obtained, after long delays and much litigation, the sum of $8000, out of which they were compelled to pay their attorneys' fees and expenses, and the heirs and devisees obtained nothing.

Whilst these are exceptional cases, yet, any number of cases, I dare say, may be found in almost any county in which as great injustice has been done, only in a smaller way. And these cases have become so frequent and notorious as to give point to the anecdote, which is told of the son, who, when his father informed him that he was going to bequeath to him his large estate and appoint as his executor his uncle, remarked: "No, father, will your property to my uncle and make me your executor, for in this way I may get something, but by the other arrangement I never shall." He evidently had a better understanding and appreciation of the workings and practical operations of the Probate Court system than the "old man." But perhaps more outrages are perpetrated upon the interests and estates of minors than all others, as is illustrated in the paper of Brother DuVal referred to above. We had hoped to accomplish some good by procuring the passage by the last General Assembly of an act repealing the act approved December 13, 1875, entitled, "An act to authorize the sale of lands belonging to deceased persons," but our recommendation was not heeded by that body and that act still disgraces the statute books. But as this paper has already exceeded the limits intended, I will hasten to close.

It may be said that it is very easy to find fault with and point out defects in any system of procedure devised by man, for none are perfect; and the question may very properly be asked: "What better have you to offer or recommend?" I will be frank and say that under the Constitution, as it now stands, I can see no clear and well-defined way out of the dif-

ficulty. For as long as small and parsimonious fees are paid the judges, we will be unable to procure the services of competent men for position of judges of probate. The remedy, I would suggest, would be a change in the Constitution, the establishment of separate chancery courts, and clothing them with the jurisdiction with which the Probate Courts are now invested; pay them salaries sufficient to induce lawyers of attainments and experience to accept the position. We are paying very dearly now for the abuse of the law, and we are reaping the fruit of incompetency as the result of parsimony, miscalled economy. If we cannot succeed in procuring the repeal of so obnoxious a statute as the one referred to, how shall we expect to accomplish this change? We can, at least, work for it, or some other that will not leave our estates at the mercy of ignorant and incompetent Probate Courts.

The pain and anguish of the dying pillow, soothed by the Christian's faith and hope, cannot be unmixed with dread when the reflection comes that the results of the years of labor, consecrated by the loving counsel of a wife and the tender memories of children, are to be left to vandals, who in the weakness of the law find the strength to do their work of wreck and ruin.

The Executive Committee reported that they had examined the reports of the Secretary and Treasurer, and had approved the same.

The report was received and adopted.

A telegram was read from President W. P. Grace expressing his regret, on account of business, at not being able to attend the meeting.

Upon motion the Association proceeded to the election of Secretary and Treasurer, which resulted in the unanimous election of G. W. Shinn, Secretary, and Geo. E. Dodge, Treasurer.

The following were elected as an Executive Committee for the ensuing year: S. R. Cockrill, W. C. Ratcliffe and L. C. Balch.

The following rule was adopted. That the acting President request the incoming President to appoint the various standing committees for the ensuing year.

The following resolution was introduced by U. M. Rose:

Resolved, That it is the sense of the Association that the statute allowing the pledge or mortgage of crops, to be grown later than the current year, should be repealed; and that the law ought to modified so as to preserve to the tenant a part of his crop free from any mortgage or legal process.

Adopted.

Upon motion, the annual address of H. C. Caldwell and the paper of Charles Coffin be referred to the Committee on Law and Law Reform, and the papers of W. S. McCain and P. O. Thweatt be referred to the Committee on Judicial Administration; and that they make such report to the next Legislature, upon the suggestions contained therein, as they think proper.

Upon motion, the Association adjourned until its next annual meeting, first Wednesday in January, 1887.

J. M. HEWITT, *President.*

G. W. SHINN, *Secretary.*

STANDING COMMITTEES

OF THE

ARKANSAS STATE BAR ASSOCIATION.

On Law and Law Reform—U. M. Rose, S. W. Williams, D. W. Carroll, B. B. Battle and R. H. Powell.

On Judicial Administration—H. C. Caldwell, G. B. Rose, Jacob Trieber, Berkely Neal and R. G. Davies.

On Education and Admission to the Bar—W. W. Smith, O. D. Scott, Greenfield Quarles, J. W. Butler and B. T. DuVal.

On Appeals and Grievances—S. W. Williams, J. C. Tappan, C. C. Waters, J. C. Yancey and Franklin Doswell.

On Publication—J. E. Williams, Gray Carroll, B. S. Johnson, John McGregor and W. H. Pemberton.

On Professional Ethics—Chas. Coffin, J. W. House, W. H. Cate, A. M. Wilson, R. B. Wilson, J. H. Harrod, R. G. Davies, T. D. Crawford, W. E. Atkinson, J. F. Robinson, W. S. McCain, Jesse Turner, Jr., and B. F. Askew.

Judiciary—J. J. Hornor, J. M. Moore, J. C. England, John Fletcher and M. W. Benjamin.

On Memorials—S. F. Clark, J. W. Blackwood, S. P. Hughes, Geo. H. Sanders and John McClure.

LIST OF MEMBERS.

Askew, B. F.
Atkinson, W. E.
Battle, B. B.
Balch, L. C.
Benjamin, M. W.
Blackwood, J. W.
Borden, J. E.
Brown, J. P.
Bunn, H. G.
Butler, J. W.
Caldwell, H. C.
Carroll, Gray
Cate, W. H.
Coffin, Chas.
Clark, Sol. F.
Clark, E. O.
Cockrill, S. R.
Coffman, C. T.
Cohn, M. M.
Collins, C. S.
Crawford, J. H.
Crawford, T. D.
Davies, R. G.
Dodge, Geo. E.
Doswell, Franklin
DuVal, Ben. T.
England, J. C.
England, C. W.
Erb, N.
Erb, J.
Fletcher, Thomas
Fletcher, John
Ford, W. C.
Gibbon, T. E.
Gibbs, M. W.
Harwood, J. H.
Hewitt, J. M.
Hornor, John J.
House, J. W.
Hughes, S. P.
Hudgins, B. B.
Jackson, W. E.
Johnson, B. S.
Jones, Dan. W.
Jones, John B.
Latta, Geo. G.
McGregor, John.
McRae, T. C.
McCain, W. S.
McClure, John

McCollum, Jas. H.
Miller, S. A.
Minor, L.
Montgomery. J. M.
Moore, J. M.
Neal, Berkely
Newman, C. G.
Pemberton, W. H.
Powell, R. H.
Quarles, G.
Ratcliffe, W. C.
Read, Jas. F.
Redmond, Chas. P.
Reynolds, D. H.
Robinson, J. F.
Rose, U. M.
Rose, G. B.
Sanders, M. T.
Sanders, Geo. H.
Scott, O. D.
Shinn, G. W.
Smith, W. W.
Smoote, Geo. P.
Stephenson, M. L.
Stayton, J. M.
Tappan, J. C.
Thweatt, P. O.
Trieber, Jacob
Turner, B. D.
Turner, Jesse, Jr.
Waters, Chas. C.
Williams, S. W.
Williams, J. E.
Wilson, A. M.
Wilson, R. B.
Wooldridge, W. T.
Yancey, J. C.

MEETING OF EXECUTIVE COMMITTEE.

LITTLE ROCK, ARK., Jan. 9, 1886.

The Executive Committee of the Bar Association met pursuant to notice at the Supreme Court room, chambers of Chief Justice Cockrill. Present, S. R. Cockrill, W. C. Ratcliffe, L. C. Balch, and the Secretary and Treasurer.

The committee was organized by electing S. R. Cockrill chairman.

Upon motion it was decided to hold the sixth annual meeting of the State Bar Association in the United States Court room in the City of Little Rock, on Wednesday, the 5th day of January, 1887.

Upon motion the following programme was adopted for the next annual meeting:

Annual Address—Franklin Doswell.

The following were selected to prepare and read papers: J. W. House, A. M. Wilson, H. G. Bunn, M. M. Cohn, Dan W. Jones and John B. Jones.

The committee adjourned to the next quarterly meeting.

CONSTITUTION.

NAME.

Article 1. The name of this Association is the Arkansas State Bar Association. Its objects are to uphold the honor of the legal profession, inculcate sound professional ethics, promote the administration of justice and the science of jurisprudence, and establish and maintain cordiality and fraternity among lawyers.

OFFICERS.

Article 2. The officers of this Association shall be a President, one Vice-President from each Judicial Circuit of the State of Arkansas, a Secretary and a Treasurer, who shall hold office for one year, and until their successors are elected, whose terms of office shall begin at the close of the annual meeting at which they may be elected.

Article 3. The Secretary, Treasurer, and three members, to be chosen annually, shall constitute an Executive Committee, who shall meet quarterly, a majority thereof forming a quorum for business. This committee shall have full power to do anything necessary to be done for the promotion and well-being of the Association during recess or vacation of the same, subject to the revision of the Association at the next annual meeting.

MEMBERS.

Article 4. All persons, members of the bar of Arkansas, who shall sign this Constitution at its organization, shall be members thereof; and thereafter every member of the bar of Arkansas licensed to practice in her Circuit Courts, of good moral character, shall be eligible to membership, and application for membership may be received by the Executive Com-

mittee, and if a majority of said committee shall favor said application, then the application shall be laid before the next annual meeting, and if three-fourths of the members at such annual meeting shall favor such application, then the applicant shall become a member. But if the application be rejected by said committee, such rejection shall not bar the right of such applicant to present his name for membership to the Association at the annual meeting, which vote shall be by secret ballot, and any applicant not receiving such favorable vote shall be declared rejected.

QUORUM OF THE ASSOCIATION.

Article 5. The President, or a Vice-President, and ten members shall constitute a quorum for business, and a less number, or the Executive Committee, may adjourn the Association from day to day for a quorum.

DUTIES OF OFFICERS.

Article 6. The President shall preside, when present, and in his absence the Vice-Presidents shall preside in the order of the number of their circuits; that is, if the President be absent the Vice-President for the first circuit shall preside; if both be absent then the second circuit, and so on.

The Vice-Presidents shall, at least one month in advance of the annual meetings, notify the members of his circuit, and appoint at least one member for each county of his circuit, wherein a member may reside, to attend the next annual meeting of the Association, and advise said member of it, and also inform the Secretary.

It shall be the duty of the Secretary to keep a record of the proceedings of the Association and of the Executive Committee, correspond with other Associations, record the Constitution and By-Laws, keep a list of members, record the names of delegates reported to him by the Vice-Presidents for each annual meeting, and present the same at such meeting, collect

all moneys due, keep an account thereof and pay them to the Treasurer, and do such other duties as may by the By-Laws be required.

The Treasurer shall keep the money, and pay it out by order of the Executive Committee or the Association, keeping just accounts.

The Secretary and Treasurer shall render an account to the Association, at each annual meeting, of all money, and to the Executive Committee as often as it may require.

COMMITTEES.

Article 7. The Association shall have such number of standing and special committees as it may order. Until otherwise ordered, the President shall appoint the following standing committees at each annual meeting, who, with all the officers elected at such meeting, shall serve until the end of the next annual meeting, to-wit:

First. On Law and Law Reform.
Second. On Judicial Administration.
Third. On Education and Admission to the Bar.
Fourth. On Appeals and Grievances.
Fifth. On Publication.
Sixth. On Professional Ethics.

A majority of any committee shall form a quorum. Said committees, except that upon Professional Ethics, shall consist of five members; the Committee on Professional Ethics shall consist of one member from each circuit, and they shall have power, and it shall be their duty, to prefer charges in the circuit or such other court as may have jurisdiction, against any lawyer, whether a member of the Association or not, who may be guilty of gross unprofessional conduct, coming within the Statutes of Arkansas, for which he may be liable by law to be disbarred, and such other matters as may be committed to them by the By-Laws. Such committee shall report to the Executive Committee all cases wherein charges are preferred,

and the case shall be docketed by said Executive Committee, and it shall extend such aid as may be needed to prosecute the charges. Three members of said committee shall constitute a quorum to do business.

BY-LAWS AND AMENDMENTS.

Article 8. By-Laws may be adopted and altered or repealed by a majority of the members present at any annual meeting, and in like manner the Constitution may be amended or changed by a vote of two-thirds.

DUES.

Article 9. Each member shall pay $5 per annum dues, payable in advance, and if not paid on or before the thirty-first day of December in every year, the name of such person shall be dropped from the rolls, and he shall not be restored to membership until all dues are paid. At each meeting, before any vote is taken, the Secretary shall call the roll of all members who have paid their dues, and thereby ascertain who are members, and no person who is not such a member shall vote or hold office.

ANNUAL MEETINGS.

Article 10. This Association shall meet annually, at such place as the Executive Committee may select, on the first Wednesday of January in each year. And if no place is previously selected the meeting shall be at Little Rock, Ark. It shall be the duty of the Executive Committee to select the place at least two months prior to said meeting, and require the Secretary within two weeks thereafter to notify each member by mail.

COMMITTEE ON JUDICIARY.

Article 11. There shall be appointed a committee of five, to be called Judiciary; and before which committee charges may be preferred against any member for unprofessional con-

duct, or violation of ethics, or matter for which an attorney may be disbarred. Said committee shall have full power to hear and determine said charges, and expel the accused if the charges are sustained; but in all such cases the accused shall have the right of appeal to the next annual meeting, and during pendency of the appeal shall be suspended from the Association.

AMENDMENTS.

I.

When the Bar Association is not in session, a majority of the Executive Committee may admit new members; but their action, in all cases, shall be liable to be revoked by the Association at any pending or the next regular meeting.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I. The Executive Committee, at its first meeting after annual meetings, shall select some person to make an address at the next annual meeting, and not exceeding six members of the Association to read papers.

II. The order of exercises at the annual meeting shall be as follows:

(1.) Opening Address by the President.
(2.) Nomination and election of members.
(3.) Report of Secretary and Treasurer.
(4.) Report of Executive Committee.
(5.) Reports of Standing Committees, in the order named in Article VII of the Constitution.
(6.) Reports of Special Committees.
(7.) Nomination and election of officers.
(8.) Reading of papers provided for in Section 1 of the By-Laws.
(9.) Miscellaneous business.

The address to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the annual meeting.

III. No person shall speak more than ten minutes at a time, nor more than twice on one subject. A stenographer may be employed by the Executive Committee at each annual meeting.

IV. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the

reports of committees, and all proceedings of the annual meeting shall be printed; but no other address made, or paper presented, shall be printed, except by order of the Committee on Publication.

V. The terms of office of all officers elected at any annual meeting shall commence at the adjournment of such meeting.

OFFICERS AND COMMITTEES.

VI. The President shall appoint all committees within thirty days after the annual meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. All standing committees shall have authority to fill all vacancies existing and occurring in their respective bodies.

VII. The Executive and other standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as their respective chairman may appoint.

VIII. The Committee on Publication shall also meet within one month after their appointment, at such time and place as the chairman shall appoint.

IX. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

X. At any of the meetings of the Association, members of the bar of any foreign country, or of any State, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

AMENDMENT.

I.

It shall be the duty of each party elected to read a paper before the Association, to notify the Executive Committee

sixty days before the annual meeting, of the subject he has selected, and the committee shall give at least thirty days' public notice of the subjects the papers are to be upon; and, as soon as read, each paper shall be subject to discussion by the Association.

RULE.

I.

That the acting President request the incoming President to appoint the various standing committees for the ensuing year.